

Texas Historical Statutes Project

TEXAS CORPORATION LAWS 1984



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Texas Corporation Laws

CIVIL STATUTES, TITLE 32, CORPORATIONS
AND
BUSINESS CORPORATION ACT
WITH INDEX

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

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WTSC Corporations.

PREFACE

This Pamphlet contains the texts of Title 32 of the Civil Statutes, Corporations, and the Business Corporation Act. Both texts are complete as amended through the 1983 Regular and First called Sessions of the 68th Legislature.

A detailed descriptive word Index is furnished at the end of this Pamphlet to facilitate the search for specific textual provisions.

Comprehensive coverage of the judicial constructions and interpretations of the Business Corporation Act and Title 32, 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

July, 1984

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TABLE OF CONTENTS

	Page
Preface	III
Effective Dates	VII

TITLE 32. CORPORATIONS

Article Analysis, see beginning of each Chapter

Chapter		
1.	Texas Miscellaneous Corporation Laws Act	1
2.	Creation of Corporations [Repealed]	12
3.	General Provisions	12
4.	Lands [Repealed]	15
5.	Books, Records, Etc. [Repealed]	15
6.	Liens for Fines, Etc. [Repealed]	15
7.	Insolvent Corporations [Repealed]	15
8.	Dissolution of Corporations [Repealed]	15
9.	Non-Profit, Cooperative, Religious and Charitable	15
10.	Public Utilities	62
11.	Roads	127
12.	Bridges, Ferries and Causeways	129
13.	Channel and Dock [Repealed]	131
14.	Deep Water [Repealed]	131
15.	Oil, Gas, Salt, Etc. [Repealed]	131
16.	Waste Water Corporations	131
17.	Trust Companies and Investments	131
18.	Miscellaneous	136
19.	Foreign Corporations [Repealed]	190
19A.	Non-Par Corporations [Repealed]	190

BUSINESS CORPORATION ACT

(Page 191)

CONSOLIDATED INDEX

(Page 263)

*

EFFECTIVE DATES

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

Year	Leg.	Session	Adjournment Date	Effective Date
1945	49	Regular	June 5, 1945	September 4, 1945
1947	50	Regular	June 6, 1947	September 5, 1947
1949	51	Regular	June 6, 1949	September 5, 1949
1951	52	Regular	June 8, 1951	September 7, 1951
1953	53	Regular	May 27, 1953	August 26, 1953
1954	53	1st C.S.	May 13, 1954	August 12, 1954
1955	54	Regular	June 7, 1955	September 6, 1955
1957	55	Regular	May 23, 1957	August 22, 1957
1957	55	1st C.S.	November 12, 1957	February 11, 1958
1957	55	2nd C.S.	December 3, 1957	March 4, 1958
1959	56	Regular	May 12, 1959	August 11, 1959
1959	56	1st C.S.	June 16, 1959	September 15, 1959
1959	56	2nd C.S.	July 16, 1959	October 15, 1959
1959	56	3rd C.S.	August 6, 1959	November 5, 1959
1961	57	Regular	May 29, 1961	August 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.

TITLE 32 CORPORATIONS

Chapter	Art.	Art.
1. Texas Miscellaneous Corporation Laws Act	1302-1.01	1302-3.02. Educational Corporations.
2. Creation of Corporations [Repealed]	1303	1302-3.03. Cemeteries.
3. General Provisions	1319	1302-3.04. Repealed.
4. Lands [Repealed]	1359	1302-3.05. Certain Railroads.
5. Books, Records, Etc. [Repealed]	1366	PART FOUR
6. Liens for Fines, Etc. [Repealed]	1372	1302-4.01 to 1302-4.07. Repealed.
7. Insolvent Corporations [Repealed]	1379	PART FIVE
8. Dissolution of Corporations [Repealed]	1387	1302-5.01. Authority of Attorney General to Examine Books, Records, etc.
9. Non-Profit, Cooperative, Religious and Charitable	1396-1.01	1302-5.02. Request to Examine.
10. Public Utilities	1416	1302-5.03. Authority to Examine Management, etc., of Corporation.
11. Roads	1447	1302-5.04. Authority to Disclose.
12. Bridges, Ferries and Causeways	1466	1302-5.05. Penalty.
13. Channel and Dock [Repealed]	1478	1302-5.06. Provisions Cumulative.
14. Deep Water [Repealed]	1483	1302-5.07. Lien for Law Violations.
15. Oil, Gas, Salt, Etc. [Repealed]	1495	1302-5.08. Date of Lien and Notice.
16. Waste Water Corporations	1508	1302-5.09. Abatement of Suit.
17. Trust Companies and Investments	1513	1302-5.10. Receiver.
18. Miscellaneous	1525	1302-5.11. Rights of State.
19. Foreign Corporations [Repealed]	1529	1302-5.12. Foreclosure.
19a. Non-Par Corporations [Repealed]	1538a	1302-5.13. Law Cumulative.
		1302-5.14. Authority of Attorney General to Proceed Against an Insolvent Corporation.
		1302-5.15. Liquidation.
		1302-5.16. May Dismiss Action.
		1302-5.17. Permission to Sue.
		1302-5.18. Examination and Notice.
		1302-5.19. Provisions Cumulative.
		PART SIX
		1302-6.01 to 1302-6.24. Repealed.
		1302-6.25, 1302-6.26. Omitted.
		PART SEVEN
		1302-7.01. Procedure to Correct Inaccurate or Defective Instrument.
		1302-7.02. Articles of Correction.
		1302-7.03. Filing Articles of Correction.
		1302-7.04. Effect of Certificate of Correction.
		1302-7.05. Fee.
		1302 to 1302i. Repealed.
		<i>The Texas Miscellaneous Corporation Laws Act, incorporated herein as Articles 1302-1.01 to 1302-6.26, was enacted by Acts 1961, 57th Leg., ch. 205, p. 408, § 1, effective August 28, 1961.</i>
		<i>Various existing articles applicable to corporations were repealed by Acts 1955, 54th Leg., ch. 64, art. 9.16 (Business Corporation Act), Acts 1961, 57th Leg., p. 408, c. 205, § 2 (Miscellaneous Corporation Laws Act), and Acts 1961, 57th Leg., p. 458, ch. 229, § 1. Both of the latter repealing acts provided that the repeals</i>
CHAPTER ONE. TEXAS MISCELLANEOUS CORPORATION LAWS ACT		
PART ONE		
Art.		
1302-1.01.	Short Title, Captions, Parts, Articles, Sections, Subsections, and Paragraphs.	
1302-1.02.	Synonymous Terms.	
1302-1.03.	Applicability of Business Corporation Act, Texas Non-Profit Corporation Act, and this Act.	
PART TWO		
1302-2.01.	Married Women.	
1302-2.02.	Notice by Firm.	
1302-2.03.	Ostensible Corporation; Debt.	
1302-2.04.	Construction of Provision as to Exclusive Right of Trustee to Sue.	
1302-2.05.	Bonds, Debentures and Other Evidence of Indebtedness; Manner of Issuance; Facsimile Signatures and Seal.	
1302-2.06.	Consideration for Indebtedness; Guarantees.	
1302-2.07.	Limited Survival after Dissolution.	
1302-2.08.	Affidavit of a Foreign Corporation.	
1302-2.09.	Authority of Certain Corporations to Borrow Money.	
1302-2.09A.	Alternative Rate.	
1302-2.10.	Corporations Discounting with Federal Intermediate Credit Bank; Interest Rate.	
PART THREE		
1302-3.01.	Veteran Corporations; Use of Name; Forfeiture of Charter.	

TITLE 32 CORPORATIONS

should not affect any right accrued or established, or any liability or penalty incurred under the repealed articles, prior to repeal. The 1955 act contained several savings provisions.

TABLE 1—MISCELLANEOUS LAWS

Showing where the subject matter of repealed articles is incorporated in the Texas Miscellaneous Corporation Laws Act.

Repealed Article	Misc.Corp. Article
1302	1302-3.04, 1302-3.05
1304a	1302-3.01
1306	1302-2.01
1307	1302-2.02
1317	1302-2.03
1321a	1302-2.04
1334b	1302-2.05
1348	1302-2.06
1358-1	1302-6.02
1358-2	1302-6.03
1358-3	1302-6.04
1358-4	1302-6.05
1358-5	1302-6.06
1358-6	1302-6.07
1358-7	1302-6.08
1358-8	1302-6.09
1358-9	1302-6.10
1358-10	1302-6.11
1358-11	1302-6.12
1358-12	1302-6.13
1358-13	1302-6.14
1358-14	1302-6.15
1358-15	1302-6.16
1358-16	1302-6.17
1358-17	1302-6.18
1358-18	1302-6.19
1358-19	1302-6.20
1358-20	1302-6.21
1358-21	1302-6.22
1358-22	1302-6.23
1358-23	1302-6.24
1358-24	1302-6.25
1358-25	1302-6.01
1358-26	1302-6.26
1359	1302-4.01
1360	1302-4.02
1361	1302-4.03
1362	1302-4.04
1363	1302-4.05
1364	1302-4.06
1365	1302-4.07
1366	1302-5.01
1367	1302-5.02
1368	1302-5.03
1369	1302-5.04
1370	1302-5.05
1371	1302-5.06
1372	1302-5.07
1373	1302-5.08

Repealed Article	Misc.Corp. Article
1374	1302-5.09
1375	1302-5.10
1376	1302-5.11
1377	1302-5.12
1378	1302-5.13
1380	1302-5.14
1381	1302-5.15
1382	1302-5.16
1383	—
1384	1302-5.17
1385	1302-5.18
1386	1302-5.19
1389	1302-2.07
1410	1302-3.02A
1411	1302-3.02B
1531	1302-2.08

TABLE 2—NON-PROFIT CORPORATIONS

Showing where the subject matter of repealed articles is covered in the Texas Non-Profit Corporation Act.

Repealed Article	Non-Profit Corp. Article
1302	1396-2.01
1303	1396-3.01
1304	1396-3.02
1314	1396-4.01
	to
	1396-4.05
1316	1396-5.01
1320	1396-2.02
1322	1396-5.08
1326	1396-2.09
1327	1396-2.14
1328	1396-2.23
1396	1396-2.01
	1396-2.02
	1396-2.09
1396a	1396-2.10
1397	1396-2.14
1398	1396-2.14
1408	1396-2.14
1409	1396-2.02(16)
1410	1396-3.02
1411	1396-3.02
1412	1396-2.02
1413	1396-5.09
1414	1396-2.26
1415	1396-2.01
1529	1396-8.01

TABLE 3—BUSINESS CORPORATIONS

Showing where the subject matter of repealed articles is covered in the Business Corporation Act of 1955.

Repealed Article	Bus.Corp. Article
1302	2.01
	3.02

TITLE 32 CORPORATIONS

Repealed Article	Bus.Corp. Article	Repealed Article	Bus.Corp. Article
1302a	2.01	1335	2.14
1302b	2.01	1336	2.14
1302c	2.01		2.16
1302d	2.01	1337	2.14
1302d-1	2.01	1338	2.14
1302e	2.01	1339	7.01
1302f	2.01	1340	7.02
1302g	2.01	1341	7.02
1302h	2.01	1342	7.02
1302i	2.01	1343	7.02
1303	3.01	1344	2.21
1303a	2.01	1345	2.21
1303b	2.01	1346	2.21
1304	3.02	1347	2.41
1305	3.01	1352	—
1308	3.02	1357	2.05
	3.05	1358	2.09
1309	9.01	1379	—
1310	3.02	1387	6.01
1311	3.05		6.03
1312	3.02		7.01
1313	3.03	1390	6.05
1314	4.01	1391	7.06
	4.04	1392	2.21
	4.06	1393	2.21
1315	4.01	1394	2.21
1315(a)	7.12	1395	2.21
1315(b)	7.12	1395a	7.11
1315(c)	4.01	1495	
1316	5.02	to	
1316(a)	5.02		
1318	9.12	1507	—
1319	2.01	1529	8.01
1320	2.02		8.02
	2.32		8.06
	3.02	1530	8.05
	5.09	1532	8.02
1321	2.02	1533	8.02
1322	5.08	1533a	2.29
1323	2.24	1534	8.02
	2.32	1535	8.07
	2.35	1536	8.18
1324	2.24	1537	8.11
	2.32		8.13
1325	2.42	1538	8.01
1326	2.23	1538a	2.15
1327	2.31		4.01
1327a	2.02(17)	1538b	2.19
1328	2.44	1538c	2.15
1329	2.38	1538d	3.05
1330	4.01		4.04
	4.02	1538e	2.17
	4.04	1538f	10.01
1331	4.01	1538g	2.19
1332	4.01	1538h	4.01
	4.04		4.02
1333	2.20	1538j	2.15
1334b § 1	2.19 sub. A	1538k	7.01

<p>Repealed Article 1538j to 1538n</p>	<p>Bus.Corp. Article</p>
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PART ONE

Art. 1302-1.01. Short Title, Captions, Parts, Articles, Sections, Subsections, and Paragraphs

A. This Act shall be known and may be cited as the "Texas Miscellaneous Corporation Laws Act."

B. The division of this Act into Parts, Articles, Sections, Subsections and Paragraphs and the use of captions in connection therewith are solely for convenience and shall have no legal effect in construing the provisions of this Act.

C. This Act has been organized and subdivided in the following manner:

(1) The Act is divided into Parts, containing groups of related Articles. Parts are numbered consecutively with cardinal numbers.

(2) The Act is also divided into Articles, numbered consecutively with Arabic numerals.

(3) Articles are divided into Sections. The Sections within each Article are numbered consecutively with capital letters.

(4) Sections are divided into Subsections. The Subsections within each Section are numbered consecutively with Arabic numerals enclosed in parentheses.

(5) Subsections are divided into paragraphs. The Paragraphs within each Subsection are numbered consecutively with lower case letters enclosed in parentheses.

[Acts 1961, 57th Leg., p. 408, ch. 205, § 1.]

Acts 1961, 57th Leg., p. 408, ch. 205, § 2 provided:

"Sec. 2. The following Statutes and Laws contained in Title 32 of the Texas Revised Civil Statutes, 1925, as amended, or contained in legislative acts subsequent to such revision and codified in Title 32, also as amended, are supplanted by the provisions of this Act and are hereby repealed:

"Acts 1935, Forty-fourth Legislature, page 416, Chapter 167 (Article 1304a);

"Article 1306;

"Article 1307 and as amended by Acts, 1931, Forty-second Legislature, page 190, Chapter 111;

"Article 1317;

"Acts 1931, Forty-second Legislature, page 738, Chapter 288, Section 1 (Article 1321a);

"Acts 1955, Fifty-fourth Legislature, page 1161, Chapter 444 (Article 1334b);

"Article 1410;

"Article 1411;

"Article 1359;

"Article 1360 and as amended by Acts, 1959, Fifty-sixth Legislature, page 104, Chapter 53, Section 1;

"Article 1361;

"Article 1362;

"Article 1363;

"Article 1364;

"Article 1365;

"Article 1366;

"Article 1367;

"Article 1368;

"Article 1369;

"Article 1370;

"Article 1371;

"Article 1372;

"Article 1373;

"Article 1374;

"Article 1375;

"Article 1376;

"Article 1377;

"Article 1378;

"Article 1380;

"Article 1381;

"Article 1382;

"Article 1383;

"Article 1384;

"Article 1385;

"Article 1386;

"Acts 1943, Forty-eighth Legislature, page 722, Chapter 397 (Articles 1358-1 through 28);

"Article 1531."

"Acts 1961, 57th Leg., p. 408, ch. 205, § 3, provided that, "The repeal of a prior act by this Act shall not affect any right accrued or established, or any liability or penalty incurred under the provisions of such act, prior to the repeal hereof."

Art. 1302-1.02. Synonymous Terms

A. Whether used in this Act or in other Acts and statutes applicable to private corporations:

(1) "Charter" has the same meaning as "articles of incorporation."

(2) "Paid-up capital" has the same meaning as "stated capital."

(3) "Capital stock" may mean, depending on the context, "stated capital," "authorized shares," "authorized and issued shares," or "issued shares."

(4) "Permit to do business" and "certificate of authority" have the same meaning.

(5) "Stockholder" and "shareholder" have the same meaning.

(6) "Stock" and "shares of stock" have the same meaning as "shares."

(7) "Authorized capital stock" has the same meaning as "authorized shares."

(8) "No par shares" means the same as "shares without par value."

[Acts 1961, 57th Leg., p. 408, ch. 205, § 1.]

Art. 1302-1.03. Applicability of Business Corporation Act, Texas Non-Profit Corporation Act, and this Act

A. All corporations shall, to the extent not inconsistent with any special statute pertaining to a particular corporation, be governed

(1) by the Texas Business Corporation Act, as amended, if organized for profit, and

(2) by the Texas Non-Profit Corporation Act, as amended, if organized not for profit.

B. This Act shall govern all foreign and domestic corporations including but without being limited to those corporations heretofore or hereafter organized or granted a permit to do business under any Statute of the State, including the Texas Business Corporation Act, or the Texas Non-Profit Corporation Act, except to the extent that any provisions of this Act are expressly made inapplicable by any provision of the Texas Business Corporation Act, the Texas Non-Profit Corporation Act, or any special Statute of this State pertaining to a particular type of corporation.

[Acts 1961, 57th Leg., p. 408, ch. 205, § 1.]

PART TWO

Art. 1302-2.01. Married Women

A. Married women may be shareholders, officers, and directors of a corporation and may sign articles of incorporation and all other corporate instruments. Their acts, contracts, and deeds as such shareholders, officers, and directors shall be as binding and effective for all purposes of the corporation as if they were males. The joinder and consent of the husband and privy examinations separate and apart from him shall not be required.

[Acts 1961, 57th Leg., p. 408, ch. 205, § 1.]

Art. 1302-2.02. Notice by Firm

A. Whenever any banking, mercantile or other business firm desires to become incorporated without a change of firm name, such firm shall, in addition to the notice of dissolution required at Common Law, give notice of such intention to become incorporated for at least four (4) consecutive weeks in some newspaper published in the county in which such firm has its principal business office, if there be a newspaper in such county; and, if not, then in some newspaper published in some adjoining county; provided, however, that such notice shall only be published one (1) day in each week during the said four (4) weeks. Until such notice has been so published for the full period above-named, no change shall take place in the liability of such firm or the members thereof to those dealing with the firm or its members. It shall be a defense that a claimant had actual notice or knowledge of such incorporation.

[Acts 1961, 57th Leg., p. 408, ch. 205, § 1. Amended by Acts 1977, 65th Leg., p. 201, ch. 100, § 1, eff. May 4, 1977.]

Art. 1302-2.03. Ostensible Corporation; Debt

A. No person who assumes an obligation to an ostensible corporation as such, shall resist the en-

forcement of such obligation, on the ground that there was in fact no such corporation, until that fact shall have been adjudged in a direct proceeding had for that purpose.

[Acts 1961, 57th Leg., p. 408, ch. 205, § 1.]

Art. 1302-2.04. Construction of Provision as to Exclusive Right of Trustee to Sue

A. Provisions in deeds of trust, indentures, mortgages, assignments, and transfers of property executed to secure the payment of bonds, debentures, or other obligations, issued thereunder, vesting in the trustees named therein the exclusive right to institute any and all suits, at law or in equity, necessary or proper to enforce the covenants and agreements therein made, or to liquidate the trust therein created, and denying to the holders of such bonds, debentures, and obligations the right to institute or prosecute such suit or suits, or to liquidate such trust until after a failure or refusal of such trustee so to do, upon request made in the manner provided for therein, shall not be construed as agreements to oust the courts of this State of their rightful jurisdiction, nor as agreements against the public policy of this State.

[Acts 1961, 57th Leg., p. 408, ch. 205, § 1.]

Art. 1302-2.05. Bonds, Debentures and Other Evidence of Indebtedness; Manner of Issuance; Facsimile Signatures and Seal

A. Where any private corporation organized under the laws of this State hereafter issues any bond, debenture, or other evidence of indebtedness, the seal of the corporation thereon may be facsimile, engraved, or printed, and where any such bond, debenture, or other evidence of indebtedness is authenticated with the manual signature of any authorized officer of the corporation or other trustee appointed or named by an indenture of trust or other agreement under which such security is issued, the signature of any of the corporation's officers authorized to execute such security may be facsimile. In case any officer who signed, or whose facsimile signature has been used on any such bond, debenture, or other evidence of indebtedness shall cease to be an officer of the corporation for any reason before the same has been delivered by the corporation, such bond, debenture, or other evidence of indebtedness may nevertheless be adopted by the corporation and issued and delivered as though the person who signed it or whose facsimile signature has been used thereon had not ceased to be such officer.

[Acts 1961, 57th Leg., p. 408, ch. 205, § 1.]

Art. 1302-2.06. Consideration for Indebtedness; Guarantees

A. No corporation, domestic or foreign, doing business in this state shall create any indebtedness whatever except for money paid, labor done, which is reasonably worth at least the sum at which it was taken by the corporation or by a corporation of which all of the outstanding shares of each class are owned by the corporation, or property actually received, reasonably worth at least the sum at which it was taken by the corporation or by a corporation of which all of the outstanding shares of each class are owned by the corporation, subject to the provisions of Sections B and C of this Article. In the absence of fraud in the transaction, the judgment of the Board of Directors or the shareholders, as the case may be, as to the value of the consideration received for any such indebtedness shall be conclusive.

B. Notwithstanding Section A of this Article, any corporation, domestic or foreign, doing business in this state shall have the power and authority to make a guaranty if the guaranty reasonably may be expected to benefit, directly or indirectly, the guarantor corporation. For purposes of this section and Section C of this Article, "guaranty" means a guaranty, mortgage, pledge, security agreement, or other agreement making the guarantor corporation or its assets responsible respecting the contracts, securities, or other obligations of any person (including, but not limited to, any domestic or foreign corporation, partnership, association, joint venture, trust, or any officer, director, or employee of such guarantor corporation). The decision of the Board of Directors that the guaranty may reasonably be expected to benefit, directly or indirectly, the guarantor corporation shall be binding upon the guarantor corporation, and no guaranty made by a corporation in accordance with the provisions of this Section B shall be invalid or unenforceable as against such corporation, unless such guaranty is sought to be enforced by a person who participated in a fraud on the guarantor corporation resulting in the making of the guaranty or by a person who had notice of such fraud before he acquired his rights under the guaranty. Nothing herein contained shall prevent a suit (1) prior to the making of a guaranty by a corporation, by a shareholder in a representative suit against the guarantor corporation, to enjoin the making of such guaranty on the ground that such guaranty could not reasonably be expected to benefit, directly or indirectly, the guarantor corporation, or (2) after the making of a guaranty by a corporation, by the guarantor corporation, whether acting directly or through a receiver, trustee, or other legal representative or through a shareholder in a representative suit, against the directors who voted for or assented to the making of such guaranty for damages or other appropriate relief on the ground that such guaranty could not reasonably have been

expected to benefit, directly or indirectly, the guarantor corporation, but such directors shall be entitled to assert any defenses which they may have under law.

C. In addition to the power and authority granted in Section B of this Article, any domestic or foreign corporation doing business in the state has the power and authority to make a guaranty respecting any subsidiary, parent, or affiliated corporation if the action is approved by the Board of Directors of the guarantor corporation. For the purposes of this section only:

(1) "subsidiary corporation" means a corporation, 100 percent of whose outstanding shares are owned at the time of the action:

(a) by the guarantor corporation itself;

(b) by one or more of the guarantor corporation's subsidiary corporations; or

(c) by the guarantor corporation and one or more of its subsidiary corporations;

(2) "parent corporation" means a corporation that at the time of the action owns 100 percent of the outstanding shares of the guarantor corporation:

(a) by itself;

(b) through one or more of its subsidiary corporations; or

(c) with one or more of its subsidiary corporations; and

(3) "affiliated corporation" means a corporation, 100 percent of whose outstanding shares are owned at the time of the action:

(a) by the parent corporation of the guarantor corporation;

(b) by one or more of the parent corporation's subsidiary corporations; or

(c) by the parent corporation and one or more of its subsidiary corporations.

D. Nothing in Section B or C of this Article is intended or shall be construed to limit or deny to any corporation, domestic or foreign, the right or power to do or perform any act which it is or may be empowered or authorized to do or perform under any other laws of the State of Texas now in force or hereafter enacted. Provided, however, Sections B and C of this Article shall not apply to nor enlarge the powers of any corporation, domestic or foreign, that does business pursuant to any provision of the Insurance Code of Texas, whether licensed in Texas or not, nor shall those sections allow or permit any corporation, not licensed under the Insurance Code of Texas, to engage in any character, type, class, or kind of fidelity, surety, or guaranty business or

transaction subject to regulation under the Insurance Code.

[Acts 1961, 57th Leg., p. 408, ch. 205, § 1. Amended by Acts 1963, 58th Leg., p. 1184, ch. 469, §§ 2, 3, eff. Aug. 23, 1963; Acts 1973, 63rd Leg., p. 676, ch. 285, § 1, eff. Aug. 27, 1973; Acts 1977, 65th Leg., p. 1162, ch. 442, § 1, eff. Aug. 29, 1977; Acts 1983, 68th Leg., p. 1715, ch. 326, § 2, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 3156, ch. 540, § 9, eff. Aug. 29, 1983.]

Art. 1302-2.07. Limited Survival after Dissolution

A. A corporation dissolved (1) by the issuance of a certificate of dissolution by the Secretary of State, or (2) by a decree of court when the court has not liquidated all the assets and business of the corporation as provided in the Texas Business Corporation Act or the Texas Non-Profit Corporation Act, as the case may be, or (3) by expiration of its period of duration, shall continue its corporate existence for a period of three (3) years from the date of dissolution, for the following purposes:

(1) prosecuting or defending in its corporate name any action or proceeding by or against the corporation;

(2) permitting the survival of any remedy not otherwise barred by limitations available to or against such corporations, its officers, directors, shareholders, members, or creditors, for any right or claim existing, or any liability incurred, prior to such dissolution;

(3) holding title to and liquidating any assets or property inadvertently or otherwise omitted from any prior distributions in liquidation to the shareholders or so omitted from prior distributions made by a non-profit corporation in accordance with a plan of distribution during the period of liquidation prior to dissolution, and distributing them to any shareholders, members, or other persons entitled thereto; and

(4) setting any other affairs not completed prior to its dissolution.

However, such corporation shall not continue its corporate existence for the purpose of continuing the business or affairs for which the corporation was organized, except in the case of a corporation whose period of duration has expired and which has chosen to revive its existence as provided in the Texas Business Corporation Act or the Texas Non-Profit Corporation Act, as the case may be.

B. During such period, the board of directors serving at the time of dissolution or the majority of them then living, however reduced in number, or their successors selected by them, shall continue to manage the affairs of the corporation for the limited purpose or purposes specified in this Article, and shall have whatever powers may be necessary to accomplish such purposes, including the power to

prosecute, pay, compromise, defend, and satisfy any action, claim, demand, or judgment by or against the corporation, and to administer, sell, and distribute in final liquidation any property or assets still remaining. In the exercise of such powers, the directors and officers shall be trustees for the benefit of creditors, shareholders, members, or other distributees of the corporation and shall be jointly and severally liable to such persons to the extent of the corporate property and assets that shall have come into their hands.

C. If after the expiration of the three-year period there still remains unresolved any action or proceeding not otherwise barred by limitations commenced by or against the corporation prior to its dissolution or within three (3) years after the date of its dissolution, the corporation shall continue to survive only for the purpose of such action or proceeding, until any judgment, orders, or decrees therein shall be fully executed.

D. A corporation dissolved by the expiration of the period of its duration may, during such three-year period, amend its articles of incorporation by following the procedure prescribed in the Texas Business Corporation Act or in the Texas Non-Profit Corporation Act, as the case may be, so as to extend or perpetuate its period of existence. Such expiration shall not of itself create any vested right on the part of any shareholder, member, or creditor to prevent such action. No acts or contracts of a corporation during a period within which it could have extended its existence as permitted by this Article, whether or not it has taken action so to extend its existence, shall be in any degree invalidated by the expiration of its period of duration.

[Acts 1961, 57th Leg., p. 408, ch. 205, § 1.]

Art. 1302-2.08. Affidavit of a Foreign Corporation

A. As a part of the application of a foreign corporation, whether for profit or not for profit, for a certificate of authority, its president, vice president, secretary or treasurer, or two of the directors thereof, shall make and file in the office of the Secretary of State an affidavit stating that such corporation is not a trust or organization in restraint of trade in violation of the laws of this State, has not within twelve (12) months next preceding the making of such affidavit, become or been a part to any trust agreement of any kind which would constitute a violation of any antitrust law of Texas existing at the date of such affidavit, and has not within that time, entered into or been in any wise a party to, any combination in restraint of trade within the United States, and that no officer of such corporation has, within the knowledge of affiant, within such time and on behalf of such corporation or for its benefit, made any such contract, or entered into or become a party to any such combina-

tion in restraint of trade. The jurat of the officer making such affidavit shall be attested by his official signature and seal of office.

[Acts 1961, 57th Leg., p. 408, ch. 205, § 1.]

Art. 1302-2.09. Authority of Certain Corporations to Borrow Money

Notwithstanding any other provision of law, corporations, domestic or foreign, may agree to and stipulate for any rate of interest as such corporation may determine, not to exceed one and one-half percent (1½) per month, on any bond, note, debt, contract or other obligation of such corporation under which the original principal amount is Five Thousand Dollars (\$5,000) or more, or on any series of advances of money pursuant thereto if the aggregate of sums advanced or originally proposed to be advanced shall exceed Five Thousand Dollars (\$5,000), or on any extension or renewal thereof, and in such instances, the claim or defense of usury by such corporation, its successors, guarantors, assigns or anyone on its behalf is prohibited; however, nothing contained herein shall prevent any charitable or religious corporation from asserting the claim or interposing the defense of usury in any action or proceeding.

[Acts 1967, 60th Leg., p. 713, ch. 296, § 1, eff. May 25, 1967.]

Acts 1967, 60th Leg., p. 713, ch. 296, §§ 2, 3 provided:

"Sec. 2. If any section, provision, sentence or phrase of this Act shall be declared unconstitutional, or void for any other reason, such adjudication shall not affect the other sections and provisions hereof, but same shall be preserved, and the remainder thereof shall be left intact and valid.

"Sec. 3. All laws and parts of laws in conflict with this Act are hereby repealed, to the extent of any such conflict only."

Art. 1302-2.09A. Alternative Rate

Notwithstanding the provisions of Article 2.09 of this Act, any corporation, domestic or foreign, including but not limited to any charitable or religious corporation, may agree to and stipulate for any rate of interest that does not exceed a rate authorized by Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.04, Vernon's Texas Civil Statutes).

[Acts 1981, 67th Leg., p. 271, ch. 111, § 1, eff. May 8, 1981.]

Sections 27 and 28 of the 1981 Act adding this article provide:

"Sec. 27. This Act shall be applicable to all claims of forfeiture made after the effective date of this Act but, with respect to claims of forfeiture in litigation pending at such effective date, the amount forfeited shall be determined under the provisions of the law as it existed prior to the effective date of this Act.

"Sec. 28. If any provision of this Act is held to be unconstitutional, no liability or forfeiture shall attach under Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.01 et seq., Vernon's Texas Civil Statutes), or any other law of this state to any person conforming his conduct to the applicable provisions of this Act. If any provision of this Act under which a rate or amount is determined or made available is determined by a court of competent jurisdiction to be unconstitutional, the maximum rate of interest or time price differential on contracts, including those for

open-end accounts that would be subject to such a provision if it were constitutional is 24 percent a year except that in the case of contracts subject to Section (b)(2), Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.04, Vernon's Texas Civil Statutes), as amended by this Act, the maximum rate of interest or time price differential is 28 percent a year."

Art. 1302-2.10. Corporations Discounting with Federal Intermediate Credit Bank; Interest Rate

An agricultural credit corporation organized or operating under the laws of this state and discounting loans with any federal intermediate credit bank, in making loans to its borrowers or discounting notes of the borrowers of an agricultural credit corporation, may charge the borrower interest at a rate not to exceed three percent per annum plus the rate of discount established and promulgated by the Federal Intermediate Credit Banks.

[Acts 1977, 65th Leg., p. 2068, ch. 820, § 1, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 1167, ch. 566, § 1, eff. Aug. 27, 1979.]

PART THREE

Art. 1302-3.01. Veteran Corporations; Use of Name; Forfeiture of Charter

A. The Secretary of State shall not hereafter issue to any corporation any charter using in the name thereof any of the following words either in the singular or the plural: "Veteran," "Legion," "Foreign," "Spanish," "Disabled," "War," "World War," or any abbreviation of such word or words, or words of the same or similar meanings, without the written approval filed with the application for charter of some Congressionally recognized Veterans' organization, in whose name any such quoted word appears, and if there be no Congressionally recognized organization in whose name the prohibited word appears, then it shall be necessary to secure the written permission of either the State Commander of the American Legion, or Disabled American Veterans of the World War, Veterans of Foreign Wars of the United States, or the United Spanish War Veterans, Veterans of Foreign Wars, or Veterans of the Spanish-American War.

[Acts 1961, 57th Leg., p. 408, ch. 205, § 1.]

Art. 1302-3.02. Educational Corporations

A. The president, professors or principals shall constitute the faculty in academy, college, or university corporations, and shall have power to enforce the rules and regulations enacted by the directors or trustees for the government and discipline of the students, and to suspend and expel offenders, as may be deemed necessary.

B. The directors or trustees named in the charter of any college, academy, university, or other corporation to promote education, and their succes-

sors, may make all necessary bylaws, elect and employ officers, provide for filling vacancies, appoint and remove professors, teachers, agents, etc., and fix their compensation, confer degrees, and do and perform all necessary acts to carry into effect the objects of the corporation.

[Acts 1961, 57th Leg., p. 408, ch. 205, § 1.]

Art. 1302-3.03. Cemeteries

A. Corporations organized under Acts, 1945, Forty-ninth Legislature, page 559, Chapter 340, as amended, shall, to the extent not inconsistent therewith, be governed by the Texas Business Corporation Act, as amended, if organized for profit, and by the Texas Non-Profit Corporation Act, as amended, if organized not for profit.

[Acts 1961, 57th Leg., p. 408, ch. 205, § 1.]

Art. 1302-3.04. Repealed by Acts 1981, 67th Leg., p. 848, ch. 297, § 34, eff. Aug. 31, 1981

Art. 1302-3.05. Certain Railroads

A. Corporations for profit may be organized for the following purposes:

(1) To construct or acquire with power to maintain and operate street railways and suburban railways and belt lines of railways within and near cities and towns, for the transportation of freight and passengers, with power also to construct, own and operate union depots, and to buy, sell and convey right-of-way upon which to construct railroads.

(2) To construct, acquire, maintain and operate lines of electric, gas, or gasoline, denatured alcohol, or naphtha motor railways within and between any cities or towns, and any interurban railways within and between cities and towns, in this State, for the transportation of freight or passengers, or both.

(3) To build, maintain and operate a line of railroads to mines, gins, quarries, manufacturing plants, or mills.

(4) The construction, operation and maintenance of terminal railways.

[Acts 1961, 57th Leg., p. 408, ch. 205, § 1.]

PART FOUR [REPEALED]

Arts. 1302-4.01 to 1302-4.07. Repealed by Acts 1981, 67th Leg., p. 848, ch. 297, § 34, eff. Aug. 31, 1981

PART FIVE

Art. 1302-5.01. Authority of Attorney General to Examine Books, Records, etc.

A. Every corporation, domestic or foreign, doing business in Texas, shall permit the Attorney General or any of his authorized assistants or representatives, to make examination of all the books, ac-

counts, records, minutes, letters, memoranda, documents, checks, vouchers, telegrams, constitution and bylaws, and other records of said corporation as he may deem necessary.

[Acts 1961, 57th Leg., p. 408, ch. 205, § 1.]

Art. 1302-5.02. Request to Examine

A. A written request shall be made to the president or other officer of said corporation at the time the Attorney General or his assistants desire to examine the business of said corporation. It shall be the duty of the officer or agent of any corporation to whom said request is presented to immediately permit the Attorney General, or his authorized assistant or representative, to inspect and examine all the said books, records, and other documents of said corporation.

[Acts 1961, 57th Leg., p. 408, ch. 205, § 1.]

Art. 1302-5.03. Authority to Examine Management, etc., of Corporation

A. The Attorney General, or any of his assistants or representatives, when authorized by the Attorney General, has the power and authority to make investigation into the organization, conduct and management of any corporation authorized to do business within this State, and has authority to inspect and examine any of its said books, records, and other documents, and take such copies thereof as in his judgment may show or tend to show said corporation has been or is engaged in acts or conduct in violation of its charter rights and privileges, or in violation of any law of this State.

[Acts 1961, 57th Leg., p. 408, ch. 205, § 1.]

Art. 1302-5.04. Authority to Disclose

A. The Attorney General, or his authorized assistants or representatives, shall not make public, or use said copies or any information derived in the course of said examination of said records or documents, except in the course of some judicial proceedings in which the State is a party, or in a suit by the State to cancel the permit or forfeit the charter of such corporation, or to collect penalties for a violation of the laws of this State, or for information of any officer of this State charged with the enforcement of its laws.

[Acts 1961, 57th Leg., p. 408, ch. 205, § 1.]

Art. 1302-5.05. Penalty

A. Any foreign corporation doing business in Texas under a permit granted under the laws of this State, or any officer or agent thereof, or any domestic corporation which shall fail or refuse to permit the Attorney General, or his authorized representative or representatives, to examine or take copies of any of its said books, records and other documents whether the same be situated within this or any other state within the United States, shall thereby

forfeit its right to do business in this State; and its permit or charter shall be canceled or forfeited.

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

[Acts 1925, S.B. 84. Amended by Acts 1961, 57th Leg., p. 408, ch. 205, § 1.]

Art. 1302-5.06. Provisions Cumulative

A. The provisions of Articles 5.01, 5.02, 5.03, 5.04, and 5.05 of this Part shall be cumulative of all other laws now in force in this State, and shall not be construed as repealing any other means afforded by law for securing testimony or inquiring into the charter rights and privileges of corporations.

[Acts 1961, 57th Leg., p. 408, ch. 205, § 1.]

Art. 1302-5.07. Lien for Law Violations

A. Whenever any domestic or foreign corporation in this State shall violate any law of this State, including the law against trusts, monopolies and conspiracies or combinations or contracts in restraint of trade, for the violation of which fines or penalties or forfeitures are provided, all property of such corporation within this State at the time of such violation, or which may thereafter come within this State, shall, by reason of such violation, become liable for such fines or penalties and for costs of suit and costs of collection.

[Acts 1961, 57th Leg., p. 408, ch. 205, § 1.]

Art. 1302-5.08. Date of Lien and Notice

A. The State of Texas shall have a lien on all such property from the date that suit shall be instituted by the Attorney General or district or county attorney acting under his direction, in any court of competent jurisdiction within this State, for the purpose of forfeiting the charter or canceling the permit of such corporation, or for such fines or penalties. The institution of such suit for such fine, penalties or forfeiture, shall constitute notice of such lien.

[Acts 1961, 57th Leg., p. 408, ch. 205, § 1.]

Art. 1302-5.09. Abatement of Suit

A. Any action or cause of action for any fine, forfeiture or penalty that the State of Texas has, or may have, against any corporation chartered under the laws of this or any other State, territory or nation, shall not abate or become abated by reason of the dissolution of such corporation, whether voluntary or otherwise, or by the forfeiture of its charter or permit.

[Acts 1961, 57th Leg., p. 408, ch. 205, § 1.]

Art. 1302-5.10. Receiver

A. Whenever a corporation, against which the State has instituted suit for forfeiture of its charter or cancellation of its permit or for fines or penalties, shall dissolve in this or any other state, or shall have a judgment rendered against it in this or any other state for the forfeiture of its charter, the court in this State in which such suit is pending shall appoint a receiver for the property and business of such corporation within this State, or that may come or be brought within this State during such receivership; or the court may, in any case wherein the State is suing any such corporation for the forfeiture of its charter, or of its permit to do business in this State, or for fines or penalties, appoint a receiver for such corporation whenever the interest of the State may seem to require such action.

[Acts 1961, 57th Leg., p. 408, ch. 205, § 1.]

Art. 1302-5.11. Rights of State

A. The State shall have the right to writs of attachment, garnishment, sequestration or injunction, without bond, to aid in the enforcement of its rights created by Articles 5.07, 5.08, 5.09, and 5.10 of this Part; and all property not otherwise exempt by law that may come into the possession of any receiver appointed under any provision of such Articles, shall be subject to the lien herein created, and for the payment of any such fine or penalty.

[Acts 1961, 57th Leg., p. 408, ch. 205, § 1.]

Art. 1302-5.12. Foreclosure

A. The Attorney General or any district or county attorney acting under his direction, may bring suit in the name of this State for foreclosure of such lien. In case the suit for foreclosure is brought against any corporation which has dissolved or had a judgment for the forfeiture of its charter or the cancellation of its permit rendered against it, pending any suit by the State of Texas against such corporation for the forfeiture of its charter or cancellation of its permit or for penalties or fines, service may be had upon any person within this State who acted and was acting as agent of any such corporation in this State at the time of such

dissolution or forfeiture of charter or cancellation of permit.

[Acts 1961, 57th Leg., p. 408, ch. 205, § 1.]

Art. 1302-5.13. Law Cumulative

A. The rights and remedies given by Articles 5.07, 5.08, 5.09, 5.10, 5.11, and 5.12 of this Part shall be construed as cumulative of all other laws in force in this State, and shall not affect, change or repeal any other remedies or rights now existing in this State for the enforcement, payment or collection of fines, penalties and forfeitures.

[Acts 1961, 57th Leg., p. 408, ch. 205, § 1.]

Art. 1302-5.14. Authority of Attorney General to Proceed Against an Insolvent Corporation

A. The Attorney General, when convinced that any corporation is insolvent, shall institute quo warranto or other appropriate proceedings to forfeit its charter or cancel its permit.

[Acts 1961, 57th Leg., p. 408, ch. 205, § 1.]

Art. 1302-5.15. Liquidation

A. Each district and county attorney shall bring and prosecute the proceedings mentioned in the preceding Article whenever directed to do so by the Attorney General. The court trying said cause, after the corporation has been shown to be insolvent, may, in its discretion, appoint a receiver or receivers for said corporation and all its properties, with full power to settle its affairs, collect its outstanding debts and divide the moneys and other properties belonging to said company among the stockholders thereof, after paying the debts due and owing by such corporation, and all expenses incident to the judicial proceedings and receivership. The court may continue the existence of such corporation for three (3) years, and for such further reasonable time as may be necessary to accomplish the objects and purposes of this law.

[Acts 1961, 57th Leg., p. 408, ch. 205, § 1.]

Art. 1302-5.16. May Dismiss Action

A. If any suit authorized by Articles 5.14 and 5.15 of this Part has been instituted, the same shall be dismissed at the cost of the defendant; or, if not instituted, the same shall not be begun, if the defendant corporation, through its stockholders, shall pay off its indebtedness or reduce the same by paying, so that it is relieved of insolvency.

[Acts 1961, 57th Leg., p. 408, ch. 205, § 1.]

Art. 1302-5.17. Permission to Sue

A. Before such petition is filed by the Attorney General, or under his authority, as provided in Articles 5.14 and 5.15 of this Part, leave therefor shall

first be granted by the judge of the court in which the proceeding is to be instituted.

[Acts 1961, 57th Leg., p. 408, ch. 205, § 1.]

Art. 1302-5.18. Examination and Notice

A. On presentation of such petition, before granting leave to sue, the judge shall carefully examine the same; and he may also require an examination into the facts; and if it shall be made to appear with reasonable certainty from said petition, or from the petition and facts, that the relief sought should be granted, the judge may grant such relief. On an application for the appointment of a receiver, the corporation proceeded against shall have ten full days' notice prior to the day set for the hearing.

[Acts 1961, 57th Leg., p. 408, ch. 205, § 1.]

Art. 1302-5.19. Provisions Cumulative

A. The rights and remedies given by Articles 5.14, 5.15, 5.16, 5.17, and 5.18 of this Part are cumulative, and shall not affect, change or repeal any other remedies or rights now existing in this State for the enforcement, payment or collection of fines, forfeitures and penalties.

[Acts 1961, 57th Leg., p. 408, ch. 205, § 1.]

PART SIX

Arts. 1302-6.01 to 1302-6.24. 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 1302-6.01 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, § 8.101 et seq.

Arts. 1302-6.25, 1302-6.26. Omitted

PART SEVEN

Art. 1302-7.01. Procedure to Correct Inaccurate or Defective Instrument

Whenever any instrument authorized to be filed with the Secretary of State under any statute to which this Act applies has been filed and is an inaccurate record of the corporate action referred to in the instrument, contains an inaccurate or erroneous statement, or was defectively or erroneously executed, sealed, acknowledged, or verified, the instrument may be corrected by articles of correction.

Articles of correction must be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary and must be verified by one of the officers signing the articles.

[Acts 1981, 67th Leg., p. 831, ch. 297, § 1, eff. Aug. 31, 1981.]

Art. 1302-7.02. Articles of Correction

The articles of correction shall:

- (1) set forth the name of the corporation;
- (2) identify the instrument to be corrected by description and the date of its filing with the Secretary of State;
- (3) identify the inaccuracy, error, or defect to be corrected; and
- (4) set forth a statement in corrected form of the portion of the instrument to be corrected.

[Acts 1981, 67th Leg., p. 831, ch. 297, § 1, eff. Aug. 31, 1981.]

Art. 1302-7.03. Filing Articles of Correction

A. The original and a copy of the articles of correction shall be delivered to the Secretary of State. If the Secretary of State finds that the articles of correction conform to law, the Secretary of State shall, when all fees have been paid as required by law:

- (1) endorse on the original and the copy the word "Filed," and the month, day, and year that the articles are filed;
- (2) file the original in the office of the Secretary of State; and
- (3) issue a certificate of correction to which the Secretary of State shall affix the copy.

B. The certificate of correction, together with the copy of the articles of correction affixed to the certificate by the Secretary of State, shall be delivered to the corporation or its representative.

[Acts 1981, 67th Leg., p. 831, ch. 297, § 1, eff. Aug. 31, 1981.]

Art. 1302-7.04. Effect of Certificate of Correction

A. After the issuance of the certificate of correction by the Secretary of State, the instrument as corrected is considered to have been filed on the date the original instrument was filed except as provided by Section B of this Article.

B. As to persons who are adversely affected by the correction, the instrument as corrected is considered to have been filed on the date the articles of correction were filed.

C. Any certificate issued by the Secretary of State before an instrument is corrected, with respect to the effect of filing the original instrument,

is considered to be applicable to the instrument as corrected as of the date the instrument as corrected is considered to have been filed pursuant to this Article.

[Acts 1981, 67th Leg., p. 831, ch. 297, § 1, eff. Aug. 31, 1981.]

Art. 1302-7.05. Fee

The Secretary of State shall collect, for the use of the State, a fee of Ten Dollars (\$10) for filing articles of correction and issuing a certificate of correction.

[Acts 1981, 67th Leg., p. 831, ch. 297, § 1, eff. Aug. 31, 1981.]

Art. 1302. Repealed by Acts 1961, 57th Leg., p. 458, ch. 229, § 1, eff. Aug. 28, 1961

Art. 1302a. Repealed by Acts 1951, 52nd Leg., p. 868, ch. 491, § 4

Arts. 1302b to 1302i. Repealed by Acts 1961, 57th Leg., p. 458, ch. 229, § 1, eff. Aug. 28, 1961

CHAPTER TWO. CREATION OF CORPORATIONS [REPEALED]

Arts. 1303 to 1304. Repealed by Acts 1961, 57th Leg., p. 458, ch. 229, § 1, eff. Aug. 28, 1961

Art. 1304a. Repealed by Acts 1961, 57th Leg., p. 408, ch. 205, § 2, eff. Aug. 28, 1961

Art. 1305. Repealed by Acts 1961, 57th Leg., p. 458, ch. 229, § 1, eff. Aug. 28, 1961

Art. 1306. Repealed by Acts 1961, 57th Leg., p. 408, ch. 205, § 2; Acts 1961, 57th Leg., p. 458, ch. 229, § 1, eff. Aug. 28, 1961

Art. 1307. Repealed by Acts 1961, 57th Leg., p. 408, ch. 205, § 2, eff. Aug. 28, 1961

Arts. 1308 to 1316a. Repealed by Acts 1961, 57th Leg., p. 458, ch. 229, § 1, eff. Aug. 28, 1961

Art. 1317. Repealed by Acts 1961, 57th Leg., p. 408, ch. 205, § 2, eff. Aug. 28, 1961

Art. 1318. Repealed by Acts 1961, 57th Leg., p. 458, ch. 229, § 1, eff. Aug. 28, 1961

CHAPTER THREE. GENERAL PROVISIONS

Art.
1319 to 1348. Repealed.
1349. Acts Prohibited.
1350. Repealed.
1351. Penalty.

- Art.
 1352. Repealed.
 1353. Watering Stock.
 1354. Suit.
 1355. Avoidance of Suit.
 1356. Remedies Cumulative.
 1357, 1358. Repealed.
 1358-1 to 1358-26. Repealed.
 1358a. Distribution to Shareholders of Cash or Property Held in Suspense, Escrow or Trust.
 1358b. Shares on Books of Corporations in Names of Joint Owners with Right of Survivorship.

Arts. 1319 to 1321. Repealed by Acts 1961, 57th Leg., p. 458, ch. 229, § 1, eff. Aug. 28, 1961

Art. 1321a. Repealed by Acts 1961, 57th Leg., p. 408, ch. 205, § 2; Acts 1961, 57th Leg., p. 458, ch. 229, § 1

Arts. 1322 to 1333. Repealed by Acts 1961, 57th Leg., p. 458, ch. 229, § 1, eff. Aug. 28, 1962

Art. 1334. Repealed by Acts 1943, 48th Leg., p. 722, ch. 397, § 25

Art. 1334a. Repealed by Acts 1955, 54th Leg., p. 1161, ch. 444, § 3

Art. 1334b. Repealed by Acts 1961, 57th Leg., p. 408, ch. 205, § 2, eff. Aug. 28, 1961

Arts. 1335 to 1347. Repealed by Acts 1961, 57th Leg., p. 458, ch. 229, § 1, eff. Aug. 28, 1961

Art. 1348. Repealed by Acts 1963, 58th Leg., p. 1184, ch. 469, § 1, eff. Aug. 23, 1963

Art. 1349. Acts Prohibited

No corporation, domestic or foreign, doing business in this State, shall employ or use its stock, means, assets or other property, directly or indirectly for any purpose whatever other than to accomplish the legitimate business of its creation, or those purposes otherwise permitted by law; provided that nothing in this Article shall be held to inhibit corporations from contributing to any bona fide association, incorporated or unincorporated, organized for purely religious, charitable or eleemosynary activities, or to commercial or industrial clubs or associations or other civic enterprises or organizations not in any manner nor to any extent directly or indirectly engaged in furthering the cause of any political party, or aiding in the election or defeat of any candidate for office, or aiding in defraying the expenses of any candidate for office, or defraying or aiding in defraying the expenses of any political campaign, or political headquarters, or aiding or assisting the success or defeat of any question to be

voted upon by the qualified voters of this State or any subdivision thereof.

[Acts 1925, S.B. 84. Amended by Acts 1943, 48th Leg., p. 311, ch. 202, § 1.]

Art. 1350. Repealed by Acts 1941, 47th Leg., p. 789, ch. 491, § 1

Art. 1351. Penalty

Any corporation which shall violate any provision of Article 1348 or Article 1349, Revised Civil Statutes of Texas, 1925, shall on proof thereof in any Court of competent jurisdiction, forfeit its charter, permit or license, and all rights and franchises which it holds under, from or by virtue of the laws of this State.

Whenever it appears that the money, assets, property, or funds of a corporation have been issued, paid out, or used, in violation of any provision of said Articles 1348 or 1349, by any agent, attorney, director or officer of such corporation, it shall be considered the act of the corporation, unless, within one year from the date of such violation it has caused to be entered, through its board of directors on its records in this State, an order repudiating the wrong and permanently dismissing from its service all persons directly or indirectly connected with such violations.

[Acts 1925, S.B. 84. Amended by Acts 1941, 47th Leg., p. 789, ch. 491, § 2.]

Art. 1352. Repealed by Acts 1961, 57th Leg., p. 458, ch. 229, § 1, eff. Aug. 28, 1961

Art. 1353. Watering Stock

No corporation shall issue any stock whatever, except for money paid, labor done which is reasonably worth at least the sum at which it was taken by the corporation, or property actually received reasonably worth at least the sum at which it was taken by the company. Any corporation which violates any provision of this article shall, on proof thereof in any court of competent jurisdiction, forfeit its charter, permit or license, as the case may be, and all rights and franchises which it holds under, from, or by virtue of the laws of this State.

[Acts 1925, S.B. 84.]

Art. 1354. Suit

When any corporation has issued and has outstanding any stocks or bonds given or issued for any purpose, other than money paid to, labor done for, or property actually received by the corporation, the Attorney General when convinced that the

facts exist which authorize the action, shall institute quo warranto or other appropriate judicial proceedings in Travis County or in any other county of this State where such corporation may be sued, to have such stocks or bonds issued in violation of the Constitution or laws of Texas, cancelled, expunged, and held for naught.

Within the meaning of the above, is included any bond or stock given in renewal, or in lieu of, any originally issued for purposes other than those mentioned above, also any issued by any corporation with which the corporation originally issuing any such stock or bonds has merged or been consolidated and given by said issuing corporation in the place of those originally issued for purposes other than as mentioned above.

[Acts 1925, S.B. 84.]

Art. 1355. Avoidance of Suit

If any suit authorized under the preceding article has been instituted, the same shall be dismissed at the cost of the defendant, or if not instituted, no action shall be brought, if the defendant corporation shall surrender, or cause to be surrendered, to the court, or to the Railroad Commission of Texas, for destruction, all such illegal stocks and bonds complained of, with proper and legal releases thereof, suitably executed for record, with such other written evidences and documents as may be necessary to show that such stocks or bonds are no longer outstanding against the corporation.

[Acts 1925, S.B. 84.]

Art. 1356. Remedies Cumulative

The rights and remedies given by the two preceding articles are cumulative, and shall not affect, change or repeal any other remedies or rights now existing in this State for the enforcement, payment, or collection of fines, forfeitures and penalties.

[Acts 1925, S.B. 84.]

Arts. 1357, 1358. Repealed by Acts 1961, 57th Leg., p. 458, ch. 229, § 1, eff. Aug. 28, 1961

Arts. 1358-1 to 1358-26. Repealed by Acts 1961, 57th Leg., p. 408, ch. 205, § 2, eff. Aug. 28, 1961

Art. 1358a. Distribution to Shareholders of Cash or Property Held in Suspense, Escrow or Trust

This Section shall apply to all distributions of cash or property, tangible or intangible, made or payable,

by any corporation, joint stock company or business trust having transferable shares or certificates of beneficial interest, organized under the laws of this state or substantially all of whose capital or assets consisted of property located in this state at the time of organization, to persons registered on its books as the owners of shares or certificates, whether in liquidation or from earnings, profits, assets or capital, and including all such distributions heretofore payable which were not paid to the person registered as the owner of the shares or interest on the records of such organization at the time such distributions were payable, or to the heirs, successors or assigns of such person, but which are now being held in suspense by such organization or which were paid or delivered by it into an escrow account or to a trustee or custodian. All such distributions or the avails thereof shall, subject to the provisions of this Section, be payable by such organization, escrow agent, trustee or custodian to such registered person, his heirs, successors or assigns, from and after the effective date of this Act. The person in whose name such shares or certificates are or were registered on the records of any such organization at the time such distributions are or were payable shall be presumed to be or to have been the owner of the shares or certificates so registered in his name at that time, and this presumption shall be rebuttable only by proof of an actual transfer having been made by such registered owner prior to that time to some known and identifiable person or persons. No such organization nor its trustees, officers, directors, or agents shall be under any liability whatever for making such distributions to a person in whose name shares or certificates were registered on its records at the time such distribution was payable to such person, or to the heirs, successors or assigns of such person, even though such person, or his heirs, successors or assigns, may not have a certificate for shares or of beneficial interest in his or their possession, unless, prior to the date any such distribution is or was payable, written notice shall have been given to such organization by a third party that he is the true beneficial owner of the shares or interest registered on its books in the name of another, and such person shall, thereafter, supply such organization with satisfactory proof of his ownership or, in the absence of such proof, shall thereafter establish by final judgment of a court of competent jurisdiction that he is the unregistered owner of such shares or interest entitled to receive such distribution thereon.

Any claim that may be asserted under the provisions hereof by any person, other than the person in whose name the transferable shares or interest were registered on the records of such organization

at the time such distribution was payable, for any such distribution on shares of or beneficial interest in such organization shall not be enforceable against such organization, its trustees, officers, directors, or agents, or against the person, his heirs, successors or assigns, in whose name the shares or interest were registered and to whom distribution was made, except by a proceeding in a court of competent jurisdiction commenced within four years from the time that such distribution was originally payable by such organization establishing by a final judgment that the claimant was entitled to receive such distribution, provided that as to any aforesaid cause of action heretofore accrued, the limitation period applicable thereto shall be either one year from the effective date of this Act or four years from the time such distribution was originally payable, whichever is longer.

[Acts 1963, 58th Leg., p. 1146, ch. 444.]

Art. 1358b. Shares on Books of Corporations in Names of Joint Owners with Right of Survivorship

Whenever shares are registered on the books of a corporation in the names of two or more persons as joint owners with the right of survivorship, upon the death of any such joint owner, the surviving joint owner or owners shall have the power to transfer full legal and equitable title to such shares to any person, firm or corporation and may receive any dividends declared upon said shares as if such surviving joint owner or owners were the absolute owners of such shares prior to such time as the corporation receives actual written notice that parties other than such surviving joint owner or owners claim an interest in such shares or dividends, and the corporation permitting such transfer by and paying such dividends to such surviving joint owner or owners prior to the receipt of such written notice from other parties claiming an interest in such shares or dividends shall be discharged from all liability for the transfer or payment so made; provided, however, that the discharge of such corporation from liability and the transfer of full legal and equitable title of the shares shall in no way affect, reduce or limit any cause of action existing in favor of any owner of an interest in such shares or dividends against such surviving joint owner or owners.

[Acts 1967, 60th Leg., p. 423, ch. 188, § 1, eff. May 15, 1967.]

CHAPTER FOUR. LANDS [REPEALED]

Arts. 1359 to 1365. Repealed by Acts 1961, 57th Leg., p. 408, ch. 205, § 2, eff. Aug. 28, 1961

CHAPTER FIVE. BOOKS, RECORDS, ETC. [REPEALED]

Arts. 1366 to 1371. Repealed by Acts 1961, 57th Leg., p. 408, ch. 205, § 2, eff. Aug. 28, 1961

CHAPTER SIX. LIENS FOR FINES, ETC. [REPEALED]

Arts. 1372 to 1378. Repealed by Acts 1961, 57th Leg., p. 408, ch. 205, § 2

CHAPTER SEVEN. INSOLVENT CORPORATIONS [REPEALED]

Art. 1379. Repealed by Acts 1961, 57th Leg., p. 458, ch. 229, § 1, eff. Aug. 28, 1961

Arts. 1380 to 1382. Repealed by Acts 1961, 57th Leg., p. 408, ch. 205, § 2, eff. Aug. 28, 1961

Art. 1383. Repealed by Acts 1961, 57th Leg., p. 408, ch. 205, § 2; Acts 1961, 57th Leg., p. 458, ch. 229, § 1, eff. Aug. 28, 1961

Arts. 1384 to 1386. Repealed by Acts 1961, 57th Leg., p. 408, ch. 205, § 2, eff. Aug. 28, 1961

CHAPTER EIGHT. DISSOLUTION OF CORPORATIONS [REPEALED]

Arts. 1387 to 1395a. Repealed by Acts 1961, 57th Leg., p. 458, ch. 229, § 1

CHAPTER NINE. NON-PROFIT, COOPERATIVE, RELIGIOUS AND CHARITABLE

1. TEXAS NON-PROFIT CORPORATION ACT

- Art.**
- 1396-1.01. Short Title, Captions, Parts, Articles, Sections, Subsections and Paragraphs.
 - 1396-1.02. Definitions.
 - 1396-2.01. Purposes.
 - 1396-2.02. General Powers.
 - 1396-2.03. Defense of Ultra Vires.
 - 1396-2.04. Corporate Name.
 - 1396-2.05. Registered Office and Registered Agent.
 - 1396-2.06. Change of Registered Office or Agent.
 - 1396-2.07. Service of Process on Corporation.
 - 1396-2.08. Members.
 - 1396-2.09. By-Laws.
 - 1396-2.10. Meetings of Members.
 - 1396-2.11. Notice of Members' Meetings.
 - 1396-2.12. Quorum of Members.
 - 1396-2.13. Voting of Members.
 - 1396-2.14. Board of Directors or Trustees.

- | | |
|---|--|
| <p>Art.
 1396-2.15. Number, Election, Classification, and Removal of Directors.
 1396-2.16. Vacancies.
 1396-2.17. Quorum and Voting Directors.
 1396-2.18. Committees.
 1396-2.19. Place and Notice of Directors' Meetings.
 1396-2.20. Officers.
 1396-2.21. Removal of Officers.
 1396-2.22. Indemnification of Officers and Directors in Certain Cases.
 1396-2.23. Books and Records.
 1396-2.23A. Financial Records and Annual Reports.
 1396-2.23B. Corporations Assisting State Agencies.
 1396-2.24. Dividends Prohibited.
 1396-2.25. Loans to Directors and Officers Prohibited.
 1396-2.26. Liability of Directors and Other Persons for Wrongful Distribution of Assets.
 1396-2.27. Charitable Corporations.
 1396-3.01. Incorporators.
 1396-3.02. Articles of Incorporation.
 1396-3.03. Filing of Articles of Incorporation.
 1396-3.04. Effect of Issuance of Certificate of Incorporation.
 1396-3.05. Organization Meeting.
 1396-4.01. Right to Amend Articles of Incorporation.
 1396-4.02. Procedure to Amend Articles of Incorporation.
 1396-4.03. Articles of Amendment.
 1396-4.04. Filing of Articles of Amendment.
 1396-4.05. Effect of Certificate of Amendment.
 1396-4.06. Restated Articles of Incorporation.
 1396-5.01. Procedure for Merger of Domestic Corporations.
 1396-5.02. Procedure for Consolidation of Domestic Corporations.
 1396-5.03. Approval of Merger or Consolidation of Domestic Corporations.
 1396-5.04. Articles of Merger or Consolidation of Domestic Corporations.
 1396-5.05. Effective Date of Merger or Consolidation of Domestic Corporations.
 1396-5.06. Effect of Merger or Consolidation of Domestic Corporations.
 1396-5.07. Merger or Consolidation of Domestic and Foreign Corporations.
 1396-5.08. Conveyance by Corporation.
 1396-5.09. Sale, Lease or Exchange of Assets.
 1396-6.01. Voluntary Dissolution.
 1396-6.02. Application and Distribution of Assets.
 1396-6.03. Plan of Distribution.
 1396-6.04. Revocation of Voluntary Dissolution Proceedings.
 1396-6.05. Article of Dissolution.
 1396-6.06. Filing of Articles of Dissolution.
 1396-7.01. Involuntary Dissolution; Reinstatement.
 1396-7.02. Notification to Attorney General, Notice to Corporation and Opportunity to Cure Default.
 1396-7.03. Venue and Process.
 1396-7.04. Appointment of Receiver for Specific Corporate Assets.
 1396-7.05. Appointment of Receiver to Rehabilitate Corporation.
 1396-7.06. Jurisdiction of Court to Liquidate Assets and Affairs of Corporation and Receiverships Therefor.</p> | <p>Art.
 1396-7.07. Qualification, Powers, and Duties of Receivers; Other Provisions Relating to Receiverships.
 1396-7.08. Directors and Members not Necessary Parties Defendant to Receivership or Liquidation Proceedings.
 1396-7.09. Decree of Involuntary Dissolution.
 1396-7.10. Filing of Decree of Dissolution.
 1396-7.11. Deposit with State Treasurer of Amount Due Certain Persons.
 1396-7.12. Survival of Remedy After Dissolution.
 1396-8.01. Admission of Foreign Corporations.
 1396-8.02. Powers of Foreign Corporations.
 1396-8.03. Corporate Name of Foreign Corporation.
 1396-8.04. Application for Certificate of Authority.
 1396-8.05. Filing of Application for Certificate of Authority.
 1396-8.06. Effect of Certificate of Authority.
 1396-8.07. Registered Office and Registered Agent of Foreign Corporation.
 1396-8.08. Change of Registered Office or Registered Agent of Foreign Corporation.
 1396-8.09. Service of Process on Foreign Corporation.
 1396-8.10, 1396-8.11. Repealed.
 1396-8.12. Amended Certificate of Authority.
 1396-8.13. Withdrawal or Termination of Foreign Corporation.
 1396-8.14. Filing of Application for Withdrawal.
 1396-8.15. Revocation of Certificate of Authority.
 1396-8.16. Filing of Decree of Revocation.
 1396-8.17. Conducting Affairs without Certificate of Authority.
 1396-9.01. Report of Domestic and Foreign Corporations.
 1396-9.02. Failure to File Reports; Forfeiture; Right of Corporation to Cure Default.
 1396-9.03. Fees for Filing Documents and Issuing Certificates.
 1396-9.04. Powers of Secretary of State.
 1396-9.05. Appeals from Secretary of State.
 1396-9.06. Certificates and Certified Copies to be Received in Evidence.
 1396-9.07. Forms to be Promulgated by Secretary of State.
 1396-9.08. Greater Voting Requirements.
 1396-9.09. Waiver of Notice.
 1396-9.10. Action Without a Meeting by Members, Directors or Committees.
 1396-10.01. Application to Foreign and Interstate Affairs.
 1396-10.02. Reservation of Power.
 1396-10.03. Effect of Invalidity of Part of This Act.
 1396-10.04. To What Corporation This Act Applies; Procedure for Adoption of Act by Existing Corporation.
 1396-10.05. Extent to Which Existing Laws Shall Remain Applicable to Corporations.
 1396-10.06. Repeal of Existing Laws; Extent and Effect Thereof.
 1396-11.01. Emergency Clause.
 1A. COOPERATIVES
 1396-50.01. Cooperative Association Act.
 2. RELIGIOUS AND CHARITABLE
 1396 to 1398. Repealed.
 1399. Lodges.</p> |
|---|--|

Art.

- 1400. Lodges: Charter.
- 1401. Lodges: Trustees.
- 1402. Lodges: Property.
- 1403. Lodges: Demise.
- 1404. Lodges: Loans.
- 1405. Lodges: Duration.
- 1406. Existing Lodge.
- 1407. Lodges: Tax.
- 1408, 1409. Repealed.

3. EDUCATIONAL

1410 to 1415a. Repealed.

1. TEXAS NON-PROFIT CORPORATION ACT

Art. 1396-1.01. Short Title, Captions, Parts, Articles, Sections, Subsections and Paragraphs

A. This Act shall be known and may be cited as the "Texas Non-Profit Corporation Act."

B. The division of this Act into Parts, Articles, Sections, Subsections, and Paragraphs and the use of captions in connection therewith are solely for convenience and shall have no legal effect in construing the provisions of this Act.

C. This Act has been organized and subdivided in the following manner:

(1) The Act is divided into Parts, containing groups of related Articles. Parts are numbered consecutively with cardinal numbers.

(2) The Act is also divided into Articles, numbered consecutively with Arabic numerals.

(3) Articles are divided into Sections. The Sections within each Article are numbered consecutively with capital letters.

(4) Sections are divided into Subsections. The Subsections within each Section are numbered consecutively with Arabic numerals enclosed in parentheses.

(5) Subsections are divided into Paragraphs. The Paragraphs within each Subsection are numbered consecutively with lower case letters enclosed in parentheses.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 1.01.]

Art. 1396-1.02. Definitions

A. As used in this Act, unless the context otherwise requires, the term:

(1) "Corporation" or "domestic corporation" means a corporation not for profit subject to the provisions of this Act, except a foreign corporation.

(2) "Foreign corporation" means a corporation not for profit organized under laws other than the laws of this State.

(3) "Non-Profit Corporation" is the equivalent of "not for profit corporation" and means a corpora-

tion no part of the income of which is distributable to its members, directors, or officers.

(4) "Articles of incorporation" means the original or restated articles of incorporation and all amendments thereto.

(5) "By-laws" means the code or codes of rules adopted for the regulation or management of the corporation, irrespective of the name or names by which such rules are designated.

(6) "Member" means one having membership rights in a corporation in accordance with the provisions of its articles of incorporation or its by-laws.

(7) "Board of Directors" means the group of persons vested with the management of the affairs of the corporation, irrespective of the name by which such group is designated.

(8) "President" means that officer designated as "president" in the articles of incorporation or by-laws of a corporation, or that officer authorized, in the articles of incorporation, the by-laws, or otherwise, to perform the functions of the principal executive officer, irrespective of the name by which he may be designated, or that committee of persons authorized, in the articles of incorporation, the by-laws, or otherwise, to perform the functions of the principal executive officer.

(9) "Vice-president" means that officer designated as "vice-president" in the articles of incorporation or the by-laws of a corporation, or that officer or committee of persons authorized, in the articles of incorporation, the by-laws, or otherwise, to perform the duties of the president upon the death, absence, or resignation of the president or upon his inability to perform the duties of his office, irrespective of the name by which he, or they, may be designated.

(10) "Secretary" means that officer designated as "secretary" in the articles of incorporation or the by-laws of a corporation, or that officer or committee of persons authorized, in the articles of incorporation, the by-laws, or otherwise, to perform the functions of secretary, irrespective of the name by which he, or they, may be designated.

(11) "Treasurer" means that officer designated as "treasurer" in the articles of incorporation or the by-laws of a corporation, or that officer or committee of persons authorized, in the articles of incorporation, the by-laws, or otherwise, to perform the functions of a treasurer, irrespective of the name by which he, or they, may be designated.

(12) "Insolvency" means inability of a corporation to pay its debts as they become due in the usual course of its affairs.

(13) "Verified" means subscribed and sworn to under the sanction of an oath, or such affirmation

as is by law equivalent to an oath, made before an officer authorized to administer oaths.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 1.02.]

Art. 1396-2.01. Purposes

A. Except as hereinafter in this Article expressly excluded herefrom, non-profit corporations may be organized under this Act for any lawful purpose or purposes, which purposes shall be fully stated in the articles of incorporation. Such purpose or purposes may include, without being limited to, any one or more of the following: charitable, benevolent, religious, eleemosynary, patriotic, civic, missionary, educational, scientific, social, fraternal, athletic, aesthetic, agricultural and horticultural; and the conduct of professional, commercial, industrial, or trade associations; and animal husbandry. Subject to the provisions of Chapter 2, Title 83, of the Revised Civil Statutes of Texas, 1925, and of such Chapter or any part thereof as it may hereafter be amended, a corporation may be organized under this Act if any one or more of its purposes for the conduct of its affairs in this State is to organize laborers, working men, or wage earners to protect themselves in their various pursuits. Provided, however, that no articles of incorporation shall be issued hereafter to laborers, working men or wage earners, or amendment granted to a charter or articles of incorporation of a corporation previously created to organize laborers, working men or wage earners, or that may be created hereafter under this Act to organize laborers, working men or wage earners, by the Secretary of State to any person, association or corporation for such purposes without an investigation first having been made by the Labor Commissioner concerning such application and a favorable recommendation made thereon by said Labor Commissioner to the Secretary of State. No investigation or recommendation by the Labor Commissioner shall be required or made of applications from farmers for articles of incorporation.

(1) Charitable corporations may be formed for the purpose of operating a Dental Health Service Corporation which service corporation will manage and coordinate the relationship between the contracting dentist, who will perform the dental services, and the patient who will receive such services where such patient is a member of a group which has contracted with the Dental Health Service Corporation to provide dental care to members of that group. An application for a charter under this Section shall have attached as exhibits (1) an affidavit by the applicants that not less than thirty percent (30%) of the dentists legally engaged in the practice of dentistry in this state together with their names and addresses have signed contracts to perform the required dental services for a period of not less than one (1) year, after incorporation, and (2) a certification by the Texas State Board of Dental Examiners that the applicant incorporators are rep-

utable citizens of the State of Texas and are of good moral character and that the corporation sought to be formed will be in the best interest of the public health. A corporation formed hereunder shall have not less than twelve (12) directors, nine (9) of whom shall be dentists licensed by the Texas State Board of Dental Examiners to practice dentistry in this state and be actively engaged in the practice of dentistry in this state. A corporation formed hereunder shall maintain not less than thirty percent (30%) of the number of dentists actually engaged in the practice of dentistry in this state as participating or contracting dentists, and shall file with the Texas State Board of Dental Examiners each September the names and addresses of all contracting or participating dentists. A corporation formed hereunder shall not (1) prevent any patient from selecting the licensed dentist of his choice to render dental services to him, (2) deny any licensed dentist the right to participate as a contracting dentist to perform the dental services contracted for by the patient, (3) discriminate among patients or licensed dentists regarding payment or reimbursement for the cost of performing dental services provided the dentist is licensed to perform the dental service, or (4) authorize any person to regulate, interfere, or intervene in any manner in the diagnosis or treatment rendered by a licensed dentist to his patient. A corporation formed hereunder may require the attending dentist to provide a narrative oral or written description of the dental services rendered for the purpose of determining benefits or providing proof of treatment. Diagnostic aids used in the course of treatment may be requested by the corporation, but may not be required for any purpose.

B. This Act shall not apply to any corporation, nor may any corporation be organized under this Act or obtain authority to conduct its affairs in this State under this Act:

(1) If any one or more of its purposes for the conduct of its affairs in this State is expressly forbidden by any law of this State.

(2) If any one or more of its purposes for the conduct of its affairs in this State is to engage in any activity which cannot lawfully be engaged in without first obtaining a license under the authority of the laws of this State to engage in such activity and such license cannot lawfully be granted to a corporation.

(3) If any one or more of its purposes for the conduct of its affairs in this State is to organize Group Hospital Service, Rural Credit Unions, Agricultural and Livestock Pools, Mutual Loan Corporations, Co-operative Credit Associations, Farmers' Co-operative Societies, Co-operative Marketing Act Corporations, Rural Electric Co-operative Corporations, Telephone Co-operative Corporations, or fraternal organizations operating under the lodge system and heretofore or hereafter incorporated under

Articles 1399 through 1407, both inclusive, of Revised Civil Statutes of Texas, 1925.

(4) If any one or more of its purposes for the conduct of its affairs in this State is to operate a bank under the banking laws of this State or to operate an insurance company of any type or character that operates under the insurance laws of this State.

(5) If any one or more of its purposes for the conduct of its affairs in this State is to engage in water or sewer service and it has heretofore or is hereafter incorporated under the Acts of 1933, Forty-third Legislature, First Called Session, Chapter 76, as amended, Acts of 1941, Forty-seventh Legislature, page 666, Chapter 407, being presently identified as Article 1434(a), Revised Civil Statutes of Texas, 1925.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.01. Amended by Acts 1961, 57th Leg., p. 959, ch. 418, § 1; Acts 1983, 68th Leg., p. 142, ch. 36, § 1, eff. Aug. 29, 1983.]

Art. 1396-2.02. General Powers

A. Subject to the provisions of Sections B and C of this Article, each corporation shall have power:

(1) To have perpetual succession by its corporate name, unless a limited period of duration is stated in its articles of incorporation. Notwithstanding the articles of incorporation, the period of duration for any corporation incorporated before August 10, 1959, is perpetual if all fees and franchise taxes have been paid as provided by law.

(2) To sue and be sued, complain and defend, in its corporate name.

(3) To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed on, affixed to, or in any manner reproduced upon, instruments of any nature required to be executed by its proper officers.

(4) To purchase, receive, lease, or otherwise acquire, own, hold, improve, use, or otherwise deal in and with, real or personal property, or any interest therein, wherever situated, as the purposes of the corporation shall require, or as shall be donated to it.

(5) To sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets.

(6) To lend money to, and otherwise assist, its employees, but not to its officers and directors.

(7) 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, shares or other interests in, or obligations of, other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships, 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.

(8) To make contracts and incur liabilities, borrow money at such rates of interest as the corporation 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.

(9) To lend money for its corporate 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.

(10) To conduct its affairs, carry on its operations, and have officers and exercise the powers granted by this Act in any state, territory, district, or possession of the United States, or any foreign country.

(11) To elect or appoint officers and agents of the corporation for such period of time as the corporation may determine and define their duties and fix their compensation.

(12) To make and alter by-laws, not inconsistent with its articles of incorporation or with the laws of this State, for the administration and regulation of the affairs of the corporation.

(13) To make donations for the public welfare or for charitable, scientific, or educational purposes and in time of war to make donations in aid of war activities.

(14) To cease its corporate activities and terminate its existence by voluntary dissolution.

(15) Whether included in the foregoing or not, to have and exercise all powers necessary or appropriate to effect any or all of the purposes for which the corporation is organized.

(16) Any religious, charitable, educational, or eleemosynary institution organized under the laws of this State may acquire, own, hold, mortgage, and dispose of and invest its funds in real and personal property for the use and benefit and under the discretion of, and in trust for any convention, conference or association organized under the laws of this State or another state with which it is affiliated, or which elects its board of directors, or which controls it, in furtherance of the purposes of the member institution.

(17) To pay pensions and establish pension plans and pension trusts for all of, or class, or classes of its officer and employees, or its officers or its employees.

B. Nothing in this Article grants any authority to officers or directors of a corporation for the exercise of any of the foregoing powers, inconsistent with limitations on any of the same which may

be expressly set forth in this Act or in the articles of incorporation or by-laws or in any other laws of this State. Authority of officers and directors to act beyond the scope of the purpose or purposes of a corporation is not granted by any provisions of this Article.

C. Nothing in this Article shall be deemed to authorize any action in violation of the Anti-Trust Laws of this State or of any of the provisions of Chapter 4 of Title 32 of Revised Civil Statutes of Texas, 1925, as now existing or hereafter amended.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.02. Amended by Acts 1977, 65th Leg., p. 837, ch. 313, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 174, ch. 96, § 1, eff. May 2, 1979.]

Art. 1396-2.03. Defense of Ultra Vires

A. Lack of capacity of a corporation shall never be made the basis of any claim or defense at law or in equity.

B. No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that such act, conveyance or transfer was beyond the scope of the purpose or purposes of the corporation as expressed in its articles of incorporation or by reason of limitations on authority of its officers and directors to exercise any statutory power of the corporation, as such limitations are expressed in the articles of incorporation, but that such act, conveyance or transfer was, or is, beyond the scope of the purpose or purposes of the corporation as expressed in its articles of incorporation or inconsistent with any such expressed limitations of authority, may be asserted:

(1) In a proceeding by a member against the corporation to enjoin the doing of any act or acts or the transfer of real or personal property by or to the corporation. If the unauthorized act or transfer sought to be enjoined is being, or is to be, performed or made pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceedings and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as part of the loss or damage sustained.

(2) In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through members in a representative suit, against the incumbent or for-

mer officers or directors of the corporation for exceeding their authority.

(3) In a proceeding by the Attorney General, as provided in this Act, to dissolve the corporation, or in a proceeding by the Attorney General to enjoin the corporation from performing unauthorized acts, or to enforce divestment of real property acquired or held contrary to the laws of this State.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.03.]

Art. 1396-2.04. Corporate Name

A. The corporate name shall conform to the following requirements:

(1) It shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation.

(2) It shall not be the same as, or deceptively similar to, the name of any domestic corporation, whether for profit or not for profit, existing under the laws of this State, or the name of any foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this State, or a name the exclusive right to which is, at the time, reserved in the manner provided by the Texas Business Corporation Act,¹ or the name of a corporation which has in effect a registration of its corporate name as provided in the Texas Business Corporation Act; provided that a name may be similar if written consent is obtained from the existing corporation having the name deemed to be similar, or the person, or corporation, for whom the name deemed to be similar is reserved or registered in the office of the Secretary of State.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.04.]

¹ Business Corporation Act, art. 1.01 et seq.

Art. 1396-2.05. Registered Office and Registered Agent

A. Each corporation shall have and continuously maintain in this State:

(1) A registered office which may be, but need not be, the same as its principal office.

(2) A registered agent, which agent may be an individual resident in this State whose business office is identical with such registered office, or a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or to conduct its affairs in this State which has a principal or business office identical with such registered office.

B. On or before the 15th day of November, 1961, each not for profit corporation organized under the laws of this State prior to the effective date of this Act shall designate its registered office and appoint

its registered agent by filing in the office of the Secretary of State a statement setting forth:

- (1) The name of the corporation.
- (2) The street address of its registered office.
- (3) The name of its registered agent.
- (4) The street address of its registered agent.
- (5) That the street address of its registered office and the street address of its registered agent are the same.

(6) That such designation and appointment were authorized by resolution duly adopted by its board of directors or, if the management of the corporation is vested in its members pursuant to Article 2.14C of this Act,¹ by the members.

C. The statement required by this Article shall be executed by the corporation by its president or a vice-president, and verified by him. The original and a copy of the statement shall be delivered to the Secretary of State. If the Secretary of State finds that such statement conforms to the provisions of this Act, he shall, when all fees have been paid as prescribed by law:

- (1) Endorse on the original and the copy the word "Filed" and the month, day, and year of the filing thereof.
- (2) File the original in his office.
- (3) Deliver the copy to the corporation or its representative.

D. Upon such filing the designation of the registered office and the appointment of the registered agent shall become effective.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.05. Amended by Acts 1979, 66th Leg., p. 213, ch. 120, § 1, eff. May 9, 1979.]

¹ Article 1396-2.14C.

Art. 1396-2.06. Change of Registered Office or Agent

A. A corporation may change its registered office or change its registered agent, or both, upon filing in the office of the Secretary of State a statement setting forth:

- (1) The name of the corporation.
- (2) The post-office address of its then registered office.
- (3) If the post-office address of its registered office is to be changed, the post-office address to which the registered office is to be changed.
- (4) The name of its then registered agent.
- (5) If its registered agent is to be changed, the name of its successor registered agent.
- (6) That the post-office address of its registered office and the post-office address of the business

office of its registered agent, as changed, will be identical.

(7) That such change was authorized by its Board of Directors or by an officer of the corporation so authorized by the Board of Directors, or if the management of the corporation is vested in its members pursuant to Article 2.14C of this Act,¹ by the members.

B. The statement required by this Article shall be executed by the corporation by its president or vice-president, and verified by him. The original and a copy of the statement shall be delivered to the Secretary of State. If the Secretary of State finds that such statement conforms to the provisions of this Act, he shall, when all fees have been paid as prescribed by law:

- (1) Endorse on the original and the copy the word "Filed" and the month, day, and year of the filing thereof.
- (2) File the original in his office.
- (3) Return the copy to the corporation or its representative.

C. Upon such filing, the change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, shall become effective.

D. Any registered agent of a corporation may resign

(1) by giving written notice to the corporation at its last known address

(2) and by giving written notice, in triplicate (the original and two copies of the notice), to the Secretary of State within ten days after mailing or delivery of said notice to the corporation. Such notice shall include the last known address of the corporation and shall include the statement that written notice of resignation has been given to the corporation and the date thereof. Upon compliance with the requirements as to written notice, the appointment of such agent shall terminate upon the expiration of thirty (30) days after receipt of such notice by the Secretary of State.

If the Secretary of State finds that such written notice conforms to the provisions of this Act, he shall:

- (1) Endorse on the original and both copies the word "filed" and the month, day and year of the filing thereof.
- (2) File the original in his office.
- (3) Return one copy to such resigning registered agent.

(4) Return one copy to the corporation at the last known address of the corporation as shown in such written notice.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.06. Amended by Acts 1969, 61st Leg., p. 2477, ch. 834, §§ 1, 2, eff. June 18, 1969; Acts 1979, 66th Leg., p. 213, ch. 120, § 2, eff. May 9, 1979.]

¹ Article 1396-2.14C.

Acts 1969, 61st Leg., p. 2477, ch. 834, which amended this article and arts. 1396-7.01, 1396-7.02, 1396-8.08, and 1396-8.15, also provided:

"Sec. 9. Validation. Nothing in this Act shall invalidate any of the procedures hereby changed by this Act which have been initiated prior to the effective date of this Act, and under such circumstances and the Secretary of State and any other state agency affected is authorized to proceed under the appropriate procedures authorized prior to this Act or as changed by this Act.

"Sec. 10. Severability. The provisions of this Act are severable. If any 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 and the application of such provisions to other persons or circumstance shall not be affected thereby."

Art. 1396-2.07. Service of Process on Corporation

A. The president and all vice-presidents of the corporation and the registered agent of the corporation shall be agents of such corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served. Where the chief executive function of a corporation is authorized to be performed by a committee, service on any member of such committee shall be deemed to be service on the president.

B. Whenever a corporation shall fail to appoint or maintain a registered agent in this State, or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the Secretary of State shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the Secretary of State of any process, notice, or demand shall be made by delivering to and leaving with him, or with the Assistant Secretary of State, or with any clerk having charge of the corporation department of his office, duplicate copies of such process, notice, or demand. In the event any such process, notice, or demand is served on the Secretary of State, he shall immediately cause one of the copies thereof to be forwarded by registered mail, addressed to the corporation at its registered office. Any service so had on the Secretary of State shall be returnable in not less than thirty (30) days.

C. The Secretary of State shall keep a record of all processes, notices, and demands served upon him under this Article, and shall record therein the time of such service and his action with reference thereto.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.07.]

Art. 1396-2.08. Members

A. A corporation may have one or more classes of members or may have no members.

B. If the corporation has one or more classes of members, the designation of such class or classes, the manner of election or appointment, and the qualifications and rights of the members of each class shall be set forth in the articles of incorporation or by-laws.

C. If the corporation is to have no members, that fact shall be set forth in the articles of incorporation.

D. A corporation may issue certificates, or cards, or other instruments evidencing membership rights, voting rights or ownership rights as may be authorized in the articles of incorporation or in the by-laws.

E. The members of a non-profit corporation shall not be personally liable for the debts, liabilities, or obligations of the corporation.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.08. Amended by Acts 1961, 57th Leg., p. 653, ch. 302, § 1.]

Art. 1396-2.09. By-Laws

A. The initial by-laws of a corporation shall be adopted by its board of directors or, if the management of the corporation is vested in its members pursuant to Article 2.14C of this Act,¹ by the members. The power to alter, amend, or repeal the by-laws or to adopt new by-laws shall be vested in the members, if any, but such power may be delegated by the members to the board of directors. In the event the corporation has no members, the power to alter, amend, or repeal the by-laws or to adopt new by-laws shall be vested in the board of directors. The by-laws may contain any provisions for the regulation and management of the affairs of a corporation not inconsistent with law or with the articles of incorporation.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.09.]

¹ Article 1396-2.14C.

Art. 1396-2.10. Meetings of Members

A. If a corporation has members:

(1) Meetings of members shall be held at such place, either within or without this State, as may be provided in the by-laws. In the absence of any such provision, all meetings shall be held at the registered office of the corporation in this State.

(2) An annual meeting of the members shall be held at such times as may be provided in the by-laws, except that where the by-laws of a corporation provide for more than one regular meeting of members each year, an annual meeting shall not be required, and directors may be elected at such meetings as the by-laws may provide. Failure to hold the annual meeting at the designated time shall not

work a dissolution of the corporation. In the event the board of directors fails to call the annual meeting at the designated time, any member may make demand that such meeting be held within a reasonable time, such demand to be made in writing by registered mail directed to any officer of the corporation. If the annual meeting of members is not called within sixty (60) days following such demand, any member may compel the holding of such annual meeting by legal action directed against said board, and all of the extraordinary writs of common law and of courts of equity shall be available to such member to compel the holding of such annual meeting. Each and every member is hereby declared to have a justiciable interest sufficient to enable him to institute and prosecute such legal proceedings.

(3) Special meetings of the members may be called by the president, the board of directors, by members having not less than one-tenth ($\frac{1}{10}$) of the votes entitled to be cast at such meeting, or such other officers or persons as may be provided in the articles of incorporation or by-laws.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.10.]

Art. 1396-2.11. Notice of Members' Meetings

A. In the case of a corporation other than a church, written or printed notice stating the place, day or 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 president, or the secretary, or the officers or persons calling the meeting, to each member 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 member at his address as it appears on the records of the corporation, with postage thereon paid.

B. In the case of a corporation which is a church, notice of meetings of members will be deemed sufficient if made by oral announcement at a regularly scheduled worship service prior to such meeting, or as otherwise provided in its articles of incorporation or its by-laws.

C. The by-laws may provide that no notice of annual or regular meetings shall be required.

D. If its by-laws so provide, a corporation having more than one thousand (1,000) members at the time a meeting is scheduled or called may give notice of such meeting by publication in any newspaper of general circulation in the community in which the principal office of such corporation is located.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.11.]

Art. 1396-2.12. Quorum of Members

A. Unless otherwise provided in the articles of incorporation or in the by-laws, members holding one-tenth of the votes entitled to be cast, represented in person or by proxy, shall constitute a quorum. The vote of the majority of the votes entitled to be cast by the members present, or represented by proxy at a meeting at which a quorum is present, shall be the act of the members meeting, unless the vote of a greater number is required by law, the articles of incorporation, or the by-laws.

B. In the absence of an express provision to the contrary in the articles of incorporation or the by-laws, a church incorporated prior to the effective date of this Act shall be deemed to have provided in its articles of incorporation or its by-laws that members present at a meeting, notice for which shall have been duly given, shall constitute a quorum.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.12.]

Art. 1396-2.13. Voting of Members

A. Each member, regardless of class, shall be entitled to one (1) vote on each matter submitted to a vote at a meeting of members, except to the extent that the voting rights of members of any class or classes are limited, enlarged, or denied by the articles of incorporation or the by-laws.

B. A member may vote in person or, unless the articles of incorporation or the by-laws otherwise provide, may vote by proxy executed in writing by the member 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; provided, however, proxies executed before and in existence on the effective date of this Act shall continue in and have such effect as they then have in accordance with whatever may then be their terms. Each proxy shall be revocable unless expressly provided therein to be irrevocable, and in no event shall it remain irrevocable for more than eleven (11) months. Where directors or officers are to be elected by members, the by-laws may provide that such elections may be conducted by mail.

C. At each election for directors every member entitled to vote at such election shall have the right to vote, in person or by proxy, for as many persons as there are directors to be elected and for whose election he has a right to vote, or, if expressly authorized by the articles of incorporation, to cumulate his vote by giving one candidate as many votes as the number of such directors multiplied by his vote shall equal, or by distributing such votes on the same principle among any number of such candidates. Any member who intends to cumulate his votes as herein authorized shall give written notice of such intention to the secretary of the corporation

on or before the day preceding the election at which such member intends to cumulate his votes.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.13.]

Art. 1396-2.14. Board of Directors or Trustees

A. The affairs of a corporation shall be managed by a board of directors, or trustees. Directors or trustees need not be residents of this State or members of the corporation unless the articles of incorporation or the by-laws so require. The articles of incorporation or the by-laws may prescribe other qualifications for directors or trustees.

B. Boards of directors or trustees of religious, charitable, educational, or eleemosynary institutions may be affiliated with, elected and controlled by a convention, conference or association organized under the laws of this State or another state, whether incorporated or unincorporated, whose membership is composed of representatives, delegates, or messengers from any church or other religious association.

C. The articles of incorporation of a church may vest the management of the affairs of the corporation in its members. If the church has a board of directors or similar body, it may limit the authority of such board to whatever extent as may be set forth in the articles of incorporation or by-laws. A church organized and operating under a congregational system and incorporated prior to the effective date of this Act shall be deemed to have vested the management of the affairs of the corporation in its members in the absence of an express provision to the contrary in the articles of incorporation or the by-laws.

D. In the case of a corporation which is a church, the Board may be designated by any name appropriate to the customs, usages, or tenets of the church.

E. The board of directors or trustees of a non-profit corporation may be elected (in whole or in part) by another non-profit corporation or corporations, domestic or foreign, if (1) the articles of incorporation or the bylaws of the former corporation so provide, and (2) the former has no members with voting rights.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.14. Amended by Acts 1967, 60th Leg., p. 1716, ch. 656, § 1, eff. June 17, 1967.]

Acts 1967, 60th Leg., p. 1716, ch. 656, §§ 2 and 3 amended articles 1396-2.17 and 1397-2.18, § A; section 4 of the act provided:

"Sec. 4. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions 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. 1396-2.15. Number, Election, Classification, and Removal of Directors

A. The number of directors of a corporation shall be not less than three (3). Subject to such limitation, the number of directors shall be fixed by the by-laws, except as to the number of the first board of directors which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to the by-laws, unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment of the articles of incorporation. No decrease in number shall have the effect of shortening the term of any incumbent director. In the absence of a by-law fixing the number of directors, the number shall be the same as that stated in the articles of incorporation.

B. The directors constituting the first board of directors shall be named in the articles of incorporation and shall hold office until the first annual election of directors or for such other period as may be specified in the articles of incorporation or the by-laws. Thereafter, directors shall be elected or appointed in the manner and for the terms provided in the articles of incorporation or the by-laws. In the absence of a provision fixing the term of office, the term of office of a director shall be one (1) year.

C. Directors may be divided into classes and the terms of office of the several classes need not be uniform. Each director shall hold office for the term for which he is elected or appointed and until his successor shall have been elected or appointed and qualified.

D. A director may be removed from office pursuant to any procedure therefor provided in the articles of incorporation or by-laws.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.15.]

Art. 1396-2.16. Vacancies

A. Unless otherwise provided in the articles of incorporation or the by-laws, any vacancy occurring in the board of directors shall be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the board of directors. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office.

B. Any directorship to be filled by reason of an increase in the number of directors shall be filled by election at an annual meeting or at a special meeting of members called for that purpose. If a corporation has no members, or no members having the right to vote thereon, such directorship shall be filled as provided in the articles of incorporation or the by-laws.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.16.]

Art. 1396-2.17. Quorum and Voting Directors

A. A quorum for the transaction of business by the board of directors shall be whichever is less:

(1) A majority of the number of directors fixed by the bylaws, or in the absence of a bylaw fixing the number of directors, a majority of the number of directors stated in the articles of incorporation, or

(2) Any number, not less than three, fixed as a quorum by the articles of incorporation or the bylaws.

B. Directors present by proxy may not be counted toward a quorum.

C. The act of the majority of the directors present in person or by proxy at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by the articles of incorporation or the bylaws.

D. A director may vote in person or (if the articles of incorporation or the bylaws so provide) by proxy executed in writing by the director. No proxy shall be valid after three months from the date of its execution. Each proxy shall be revocable unless expressly provided therein to be irrevocable, and unless otherwise made irrevocable by law.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.17. Amended by Acts 1967, 60th Leg., p. 1716, ch. 656, § 2, eff. June 17, 1967.]

Art. 1396-2.18. Committees

A. If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the directors in office, may designate one or more committees, which, to the extent provided in such resolution, in the articles of incorporation, or in the bylaws, shall have and exercise the authority of the board of directors in the management of the corporation. Each such committee shall consist of two or more persons, a majority of whom are directors; the remainder, if the articles of incorporation or the bylaws so provide, need not be directors. The designation of such committees and the delegation thereto of authority shall not operate to relieve the board of directors, or any individual director, of any responsibility imposed upon it or him by law. Any non-director who becomes a member of any such committee shall have the same responsibility with respect to such committee as a director who is a member thereof.

B. Other committees not having and exercising the authority of the board of directors in the management of the corporation may be designated and appointed by a resolution adopted by a majority of the directors at a meeting at which a quorum is present, or by the president thereunto authorized by a like resolution of the board of directors or by the articles of incorporation or by the bylaws. Mem-

bership on such committees may, but need not be, limited to directors.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.18. Amended by Acts 1967, 60th Leg., p. 1716, ch. 656, § 3, eff. June 17, 1967.]

Art. 1396-2.19. Place and Notice of Directors' Meetings

A. Meetings of the board of directors, regular or special, may be held either within or without this State.

B. Regular meetings of the board of directors may be held with or without notice as prescribed in the bylaws. Special meetings of the board of directors shall be held upon such notice as is prescribed in the bylaws. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting, unless required by the bylaws.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.19.]

Art. 1396-2.20. Officers

A. The officers of a corporation shall consist of a president, one or more vice-presidents, a secretary, a treasurer, and such other officers and assistant officers as may be deemed necessary, each of whom shall be elected or appointed at such time and in such manner and for such terms not exceeding three (3) years as may be prescribed in the articles of incorporation or the bylaws. In the absence of any such provisions, all officers shall be elected or appointed annually by the board of directors, or, if the management of the corporation is vested in its members pursuant to Article 2.14C of this Act,¹ by the members. Any two or more offices may be held by the same person, except the offices of president and secretary. A committee duly designated may perform the functions of any officer and the functions of any two or more officers may be performed by a single committee, including the functions of both president and secretary.

B. The articles of incorporation or the bylaws may provide that any one or more officers of the corporation shall be ex-officio members of the board of directors.

C. The officers of a corporation may be designated by such other or additional titles as may be provided in the articles of incorporation or the bylaws.

D. In the case of a corporation which is a church, it shall not be necessary that there be

officers as provided herein, but such duties and responsibilities may be vested in the board of trustees or other designated body in any manner provided for in the articles of incorporation or the by-laws. [Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.20.]

¹ Article 1396-2.14C.

Art. 1396-2.21. Removal of Officers

A. Any officer elected or appointed may be removed by the persons authorized to elect or appoint such officer whenever in their judgment the best interests of the corporation will be served thereby. The removal of an officer shall be without prejudice to the contract rights, if any, of the officer so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.21.]

Art. 1396-2.22. Indemnification of Officers and Directors in Certain Cases

A. The corporation shall have the power to indemnify any director or officer or former director or officer of the corporation for expenses and costs (including attorneys' fees) actually and necessarily incurred by him in connection with any claim asserted against him, by action in court or otherwise, by reason of his being or having been such director or officer, except in relation to matters as to which he shall have been guilty of negligence or misconduct in respect of the matter in which indemnity is sought.

B. If the corporation has not fully indemnified him, the court in the proceeding in which any claim against such director or officer has been asserted, or any court having the requisite jurisdiction of an action instituted by such director or officer on his claim for indemnity, may assess indemnity against the corporation, its receiver, or trustee, for the amount paid by such director or officer in satisfaction of any judgment or in compromise of any such claim (exclusive in either case of any amount paid to the corporation), and any expenses and costs (including attorneys' fees) actually and necessarily incurred by him in connection therewith to the extent that the court shall deem reasonable and equitable, provided, nevertheless, that indemnity may be assessed under this Section only if the court finds that the person indemnified was not guilty of negligence or misconduct in respect of the matter in which indemnity is sought.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.22.]

Art. 1396-2.23. Books and Records

A. Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, board of directors, and committees having any authority of the board of directors and shall keep at its registered office or principal office in this State a record

of the names and addresses of its members entitled to vote.

B. All books and records of a corporation may be inspected by any member, or his agent or attorney, for any proper purpose at any reasonable time. [Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.23.]

Art. 1396-2.23A. Financial Records and Annual Reports

A. A corporation shall maintain current true and accurate financial records with full and correct entries made with respect to all financial transactions of the corporation, including all income and expenditures, in accordance with generally accepted accounting practices.

B. Based on these records, the board of directors or trustees shall annually prepare or approve a report of the financial activity of the corporation for the preceding year. The report must conform to accounting standards as promulgated by the American Institute of Certified Public Accountants and must include a statement of support, revenue, and expenses and changes in fund balances, a statement of functional expenses, and balance sheets for all funds.

C. All records, books, and annual reports of the financial activity of the corporation shall be kept at the registered office or principal office of the corporation in this state for at least three years after the closing of each fiscal year and shall be available to the public for inspection and copying there during normal business hours. The corporation may charge for the reasonable expense of preparing a copy of a record or report.

D. A corporation that fails to maintain financial records, prepare an annual report, or make a financial record or annual report available to the public in the manner prescribed by this article is guilty of a Class B misdemeanor.

E. This article does not apply to:

- (1) a corporation that solicits funds only from its members;
- (2) a corporation which does not intend to solicit and receive and does not actually raise or receive contributions from sources other than its own membership in excess of \$10,000 during a fiscal year;
- (3) a proprietary school that has received a certificate of approval from the State Commissioner of Education, a public institution of higher education and foundations chartered for the benefit of such institutions or any component part thereof, a private institution of higher education with a certificate of authority to grant a degree issued by the Coordinating Board, Texas College and University System, or an elementary or secondary school;
- (4) religious institutions which shall be limited to churches, ecclesiastical or denominational organiza-

tions, or other established physical places for worship at which religious services are the primary activity and such activities are regularly conducted;

(5) a trade association or professional society whose income is principally derived from membership dues and assessments, sales, or services;

(6) any insurer licensed and regulated by the State Board of Insurance;

(7) an organization whose charitable activities relate to public concern in the conservation and protection of wildlife, fisheries, and allied natural resources;

(8) an alumni association of a public or private institution of higher education in this state, provided that such association is recognized and acknowledged by the institution as its official alumni association.

[Acts 1977, 65th Leg., p. 1947, ch. 773, § 1, eff. Jan. 1, 1978.]

Art. 1396-2.23B. Corporations Assisting State Agencies

A. In this Article state agency means:

(1) a board, commission, department, office, or other entity that is in the executive branch of state government and that was created by the constitution or a statute of the State, including an institution of higher education as defined by Section 61-003, Texas Education Code, as amended;

(2) the legislature or a legislative agency; or

(3) the Supreme Court, the Court of Criminal Appeals, a court of appeals, or the State Bar of Texas or another state judicial agency.

B. The books and records of a corporation except a bona fide alumni association are subject to audit at the discretion of the State Auditor if both of the following obtain:

(1) the corporation's charter specifically dedicates the corporation's activities to the benefit of a particular agency of state government; and

(2) a board member, officer, or employee of the same agency of state government sits on the board of directors of the corporation in other than an ex officio, nonvoting, advisory capacity.

C. If the corporation's charter specifically dedicates the corporation's activities to the benefit of a particular agency of state government but the conditions in Section B of this Article do not obtain, before the 90th day after the last day of the corporation's fiscal year, the corporation shall file with the Secretary of State a report for the preceding fiscal year consisting of a copy of a report as described by Section B of Article 2.23A of this Act (Article 1396-2.23A, Vernon's Texas Civil Statutes).

[Acts 1983, 68th Leg., p. 4600, ch. 779, § 1, eff. Aug. 29, 1983.]

Section 2 of the 1983 Act provides:

"If a corporation is required to file an annual report under Section C, Article 2.23B, Texas Non-Profit Corporation Act, as added by this Act, the initial report that the corporation is required to file under that section is the report for its first fiscal year beginning on or after the effective date of this Act."

Art. 1396-2.24. Dividends Prohibited

A. No dividend shall be paid and no part of the income of a corporation shall be distributed to its members, directors, or officers. A corporation may pay compensation in a reasonable amount to its members, directors, or officers for services rendered, may confer benefits upon its members in conformity with its purposes, and upon dissolution or final liquidation may make distributions to its members, but only as permitted by this Act.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.24.]

Art. 1396-2.25. Loans to Directors and Officers Prohibited

A. No loans shall be made by a corporation to its directors or officers.

B. The directors of a corporation who vote for or assent to the making of a loan to a director or officer of the corporation, and any officer or officers participating in the making of such loan, shall be jointly and severally liable to the corporation for the amount of such loan until repayment thereof.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.25.]

Art. 1396-2.26. Liability of Directors and Other Persons for Wrongful Distribution of Assets

A. In addition to any other liabilities imposed by law upon directors of a corporation, the directors who vote for or assent to any distribution of assets other than in payment of its debts, when the corporation is insolvent or when such distribution would render the corporation insolvent, or during the liquidation of the corporation without the payment and discharge of or making adequate provisions for all known debts, obligations and liabilities of the corporation, shall be jointly and severally liable to the corporation for the value of such assets which are thus distributed, to the extent that such debts, obligations and liabilities of the corporation are not thereafter paid and discharged.

B. A director of a corporation who is present at a meeting of its board of directors at which action was taken on such corporate matter shall be presumed to have assented to such action unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent

shall not apply to a director who voted in favor of the action.

C. A director shall not be liable under this Article if, in the exercise of ordinary care, he relied and acted in good faith upon written financial statements of the corporation represented to him to be correct by the president or by the officer of such corporation having charge of its books of account, or certified by an independent public or certified public accountant or firm of such accountants fairly to reflect the financial condition of such corporation, nor shall he be so liable if, in the exercise of ordinary care and good faith, in determining the amount available for such distribution, he considered the assets to be of their book value.

D. A director shall not be liable under this Article if, in the exercise of ordinary care, he acted in good faith and in reliance upon the written opinion of an attorney for the corporation.

E. A director against whom a claim shall be asserted under this Article and who shall be held liable thereon shall be entitled to contribution from persons who accepted or received such distribution knowing such distribution to have been made in violation of this Article, in proportion to the amounts received by them respectively.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.26.]

Art. 1396-2.27. Charitable Corporations

A. Notwithstanding any provision in this Act or in the articles of incorporation to the contrary (except as provided in Section B), the articles of incorporation of each corporation which is a private foundation described in Section 509 of the Internal Revenue Code of 1954¹ shall be deemed to contain the following provisions: "The corporation shall make distributions at such time and in such manner as not to subject it to tax under Section 4942 of the Internal Revenue Code of 1954;² the corporation shall not engage in any act of self-dealing which would be subject to tax under Section 4941 of the Code;³ the corporation shall not retain any excess business holdings which would subject it to tax under Section 4943 of the Code;⁴ the corporation shall not make any investments which would subject it to tax under Section 4944 of the Code;⁵ and the corporation shall not make any taxable expenditures which would subject it to tax under Section 4945 of the Code."⁶ With respect to any such corporation organized prior to January 1, 1970, this Section A shall apply only for its taxable years beginning on or after January 1, 1972.

B. The articles of incorporation of any corporation described in Section A may be amended to expressly exclude the application of Section A, and in the event of such amendment, Section A shall not apply to such corporation.

C. All references in this Article to "the Code" are to the Internal Revenue Code of 1954, and all references in this Article to specific sections of the Code include corresponding provisions of any subsequent Federal tax laws.

[Acts 1971, 62nd Leg., p. 889, ch. 119, § 1, eff. May 10, 1971.]

1 26 U.S.C.A. § 509.

2 26 U.S.C.A. § 4942.

3 26 U.S.C.A. § 4941.

4 26 U.S.C.A. § 4943.

5 26 U.S.C.A. § 4944.

6 26 U.S.C.A. § 4945.

Section 2 of the 1971 Act provided: "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 this Act shall nevertheless be valid, and the Legislature hereby declares that this Act would have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, part, portion or provision. All of the terms and provisions of this Act are to be liberally construed to effectuate the purposes, powers, rights, functions and authorities herein set forth."

Art. 1396-3.01. Incorporators

A. Three (3) or more natural persons, two (2) of whom must be citizens of the State of Texas, of the age of eighteen (18) years or more may act as incorporators of a corporation by signing and verifying the articles of incorporation for such corporation and delivering the original and a copy of the articles of incorporation to the Secretary of State.

B. Any religious society, charitable, benevolent, literary, or social association, or church may incorporate under this Act with the consent of a majority of its members, who shall authorize the incorporators to execute the articles of incorporation.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 3.01. Amended by Acts 1979, 66th Leg., p. 214, ch. 120, § 3, eff. May 9, 1979.]

Art. 1396-3.02. Articles of Incorporation

A. The articles of incorporation shall set forth:

- (1) The name of the corporation.
- (2) A statement that the corporation is a non-profit corporation.
- (3) The period of duration, which may be perpetual.
- (4) The purpose or purposes for which the corporation is organized.
- (5) If the corporation is to have no members, a statement to that effect.
- (6) If the corporation is a church and the management of its affairs is to be vested in its members pursuant to Article 2.14C of this Act,¹ a statement to that effect.
- (7) Any provision, not inconsistent with law, including any provision which under this Act is re-

quired or permitted to be set forth in the bylaws, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation.

(8) The street address of its initial registered office and the name of its initial registered agent at such street address.

(9) The number of directors or trustees constituting the initial board of directors or trustees, and the names and addresses of the persons who are to serve as the initial directors or trustees. A church vesting management of its affairs in its members pursuant to Article 2.14C of this Act may, in lieu of providing for a board of directors or trustees, set forth in the articles of incorporation the officers or other body designated pursuant to Article 2.20D of this Act.

(10) The name and street address of each incorporator.

B. Provided that charters or articles of incorporation of corporations existing on the effective date of this Act which do not contain one or more of the requirements listed in the foregoing Section need not be amended for the purpose of meeting such requirements. Any subsequent amendment or restatement of the articles of incorporation of such corporation shall include such requirements, except that it shall not be necessary, in such amended or restated articles, to include the information required in Subsections (8), (9), and (10) of Section A.

C. It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this Act.

D. Unless the articles of incorporation provide that a change in the number of directors or trustees shall be made only by amendment to the articles of incorporation, a change in the number of directors or trustees made by amendment to the by-laws shall be controlling. In all other cases, whenever a provision of the articles of incorporation is inconsistent with a by-law, the provision of the articles of incorporation shall be controlling.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 3.02. Amended by Acts 1965, 59th Leg., p. 1294, ch. 597, § 1, eff. Aug. 30, 1965.]

¹ Article 1396-2.14C.

Art. 1396-3.03. Filing of Articles of Incorporation

A. The original and a copy of the articles of incorporation shall be delivered to the Secretary of State. If the Secretary of State finds that the articles of incorporation conform to law, he shall, when all fees have been paid as required by law:

(1) Endorse on the original and the copy the word "Filed", and the month, day, and year of the filing thereof.

(2) File the original in his office.

(3) Issue a certificate of incorporation to which he shall affix the copy.

B. The certificate of incorporation, together with the copy of the articles of incorporation affixed thereto by the Secretary of State shall be delivered to the incorporators or their representatives.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 3.03. Amended by Acts 1979, 66th Leg., p. 214, ch. 120, § 4, eff. May 9, 1979.]

Art. 1396-3.04. Effect of Issuance of Certificate of Incorporation

A. Upon the issuance of the certificate of incorporation, the corporate existence shall begin, and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with, and that the corporation has been incorporated under this Act, except as against the State in a proceeding for involuntary dissolution.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 3.04.]

Art. 1396-3.05. Organization Meeting

A. After the issuance of the certificate of incorporation, an organization meeting of the board of directors named in the articles of incorporation shall be held, either within or without this State, at the call of a majority of the incorporators, for the purpose of adopting by-laws, electing officers, and for such other purposes as may come before the meeting. The incorporators calling the meeting shall give at least three (3) days' notice thereof by mail to each director named in the articles of incorporation, which notice shall state the time and place of the meeting.

B. A first meeting of the members may be held at the call of the directors, or a majority of them, upon at least three (3) days' notice, for such purposes as shall be stated in the notice of the meeting.

C. If the management of a church is vested in its members pursuant to Article 2.14C of this Act,¹ the organization meeting shall be held by the members upon the call of a majority of the incorporators. The incorporators calling the meeting shall (a) give at least three (3) days' notice by mail to each member stating the time and place of the meeting, or shall (b) make an oral announcement of the time and place of meeting at a regularly scheduled worship service prior to such meeting, or shall (c) give such notice of the meeting as may be provided for in the articles of incorporation.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 3.05.]

¹ Article 1396-2.14C.

Art. 1396-4.01. Right to Amend Articles of Incorporation

A. A corporation may amend its articles of incorporation from time to time, in any and as many respects as may be desired, so long as its articles of incorporation as amended contain only such provisions as are lawful under this Act.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 4.01.]

Art. 1396-4.02. Procedure to Amend Articles of Incorporation

A. Amendments to the articles of incorporation may be made in the following manner:

(1) Where there are members having voting rights, the board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this Act for the giving of notice of meetings of members. The proposed amendment shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting in person or by proxy are entitled to cast, unless any class of members is entitled to vote as a class thereon by the terms of the articles of incorporation or of the by-laws, in which event the proposed amendment shall not be adopted unless it also receives at least two-thirds of the votes which the members of each such class who are present at such meeting in person or by proxy are entitled to cast.

(2) Where there are no members, or no members having voting rights, an amendment shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

(3) Where the management of the affairs of the corporation is vested in the members pursuant to Article 2.14C of this Act,¹ the proposed amendment shall be submitted to a vote at a meeting of members which may be an annual, a regular, or a special meeting. Except as otherwise provided in the articles of incorporation or the by-laws, notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to the members within the time and in the manner provided in this Act for the giving of notice of meetings of members. The proposed amendment shall be adopted upon receiving at least two-thirds of the votes of members present at such meeting.

B. Any number of amendments may be submitted and voted upon at any one meeting.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 4.02.]

¹ Article 1396-2.14C.

Art. 1396-4.03. Articles of Amendment

A. The articles of amendment shall be executed by the corporation by its president or by a vice-president and by its secretary or an assistant secretary, and verified by one of the officers signing such articles, and shall set forth:

(1) The name of the corporation.

(2) If the amendment alters any provision of the original or amended articles of incorporation, an identification by reference or description of the altered provision and a statement of its text as it is amended to read. If the amendment is an addition to the original or amended articles of incorporation, a statement of that fact and the full text of each provision added.

(3) Where there are members having voting rights, (1) a statement setting forth the date of the meeting of members at which the amendment was adopted, that a quorum was present at such meeting, and that such amendment received at least two-thirds of the votes which members present at such meeting in person or by proxy were entitled to cast, as well as, in the case of any class entitled to vote as a class thereon by the terms of the articles of incorporation or of the by-laws, at least two-thirds of the votes which members of any such class who were present at such meeting in person or by proxy were entitled to cast, or (2) a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto.

(4) Where there are no members, or no members having voting rights, a statement of such fact, the date of the meeting of the board of directors at which the amendment was adopted, and a statement of the fact that such amendment received the vote of a majority of the directors in office.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 4.03. Amended by Acts 1979, 66th Leg., p. 214, ch. 120, § 5, eff. May 9, 1979.]

Art. 1396-4.04. Filing of Articles of Amendment

A. The original and a copy of the articles of amendment shall be delivered to the Secretary of State. If the Secretary of State finds that the articles of amendment conform to law, he shall, when all fees have been paid as in this Act prescribed:

(1) Endorse on the original and the copy the word "Filed", and the month, day, and year of the filing thereof.

(2) File the original in his office.

(3) Issue a certificate of amendment to which he shall affix the copy.

B. The certificate of amendment, together with the copy of the articles of amendment affixed thereto by the Secretary of State, shall be delivered to the corporation or its representative.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 4.04. Amended by Acts 1979, 66th Leg., p. 215, ch. 120, § 6, eff. May 9, 1979.]

Art. 1396-4.05. Effect of Certificate of Amendment

A. Upon the issuance of the certificate of amendment by the Secretary of State, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

B. No amendment shall affect any existing cause of action in favor of or against such corporation, or any pending suit to which such corporation shall be a party, or the existing rights of persons other than members; and, in the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate for that reason.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 4.05.]

Art. 1396-4.06. Restated Articles of Incorporation

A. A corporation may, by following the procedure to amend the articles of incorporation provided by this Act, authorize, execute and file restated articles of incorporation which may restate either:

(1) The entire text of the articles of incorporation as amended or supplemented by all certificates of amendment previously issued by the Secretary of State; or

(2) The entire text of the articles of incorporation as amended or supplemented by all certificates of amendment previously issued by the Secretary of State, and as further amended by such restated articles of incorporation.

B. If the restated articles of incorporation restate the entire articles of incorporation as amended and supplemented by all certificates of amendment previously issued by the Secretary of State, without making any further amendment thereof, the introductory paragraph shall contain a statement that the instrument accurately copies the articles of incorporation and all amendments thereto that are in effect to date and that the instrument contains no change in the provisions thereof, provided that the number of directors then constituting the board of directors and the names and addresses of the persons then serving as directors may be inserted in lieu of similar information concerning the initial board of directors, and the name and address of each incorporator may be omitted; and provided

further that, if the management of a church is vested in its members pursuant to Article 2.14C of this Act¹ and if, under that Article, original articles of incorporation are not required to contain a statement to that effect, any restatement of the articles of incorporation shall contain a statement to that effect.

C. If the restated articles of incorporation restate the entire articles of incorporation as amended and supplemented by all certificates of amendment previously issued by the Secretary of State, and as further amended by such restated articles of incorporation, the instrument containing such articles shall:

(1) Set forth, for any amendment made by such restated articles of incorporation, a statement that each such amendment has been effected in conformity with the provisions of this Act, and shall further set forth the statements required by this act to be contained in articles of amendment, provided that the full text of such amendments need not be set forth except in the restated articles of incorporation as so amended.

(2) Contain a statement that the instrument accurately copies the articles of incorporation and all amendments thereto that are in effect to date and as further amended by such restated articles of incorporation and that the instrument contains no other change in any provision thereof; provided that the number of directors then constituting the board of directors and the names and addresses of the persons then serving as directors may be inserted in lieu of similar information concerning the initial board of directors, and the names and addresses of each incorporator may be omitted; and provided further that, if the management of a church is vested in its members pursuant to Article 2.14C of this Act, and if, under that Article, original articles of incorporation are not required to contain a statement to that effect, any restatement of the articles of incorporation shall contain a statement to that effect.

(3) Restate the text of the entire articles of incorporation as amended and supplemented by all certificates of amendment previously issued by the Secretary of State and as further amended by the restated articles of incorporation.

D. Such restated articles of incorporation shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary, and shall be verified by one of the officers signing such articles. The original and a copy of the restated articles of incorporation shall be delivered to the Secretary of State. If the Secretary of State finds that the restated articles of incorporation conform to law, he shall, when the appropriate filing fee is paid as required by law:

(1) Endorse on the original and the copy the word "Filed", and the month, day, and year of the filing thereof.

(2) File the original in his office.

(3) Issue a restated certificate of incorporation to which he shall affix the copy.

E. The restated certificate of incorporation, together with the copy of the restated articles of incorporation affixed thereto by the Secretary of State, shall be delivered to the corporation or its representative.

F. Upon the issuance of the restated certificate of incorporation by the Secretary of State, the original articles of incorporation and all amendments thereto shall be superseded and the restated articles of incorporation shall be deemed to be articles of incorporation of the corporation.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 4.06. Amended by Acts 1979, 66th Leg., p. 215, ch. 120, § 7, eff. May 9, 1979; Acts 1981, 67th Leg., p. 832, ch. 297, § 2, eff. Aug. 31, 1981.]

¹ Article 1396-2.14C.

Art. 1396-5.01. Procedure for Merger of Domestic Corporations

A. Any two or more domestic corporations may merge into one of such corporations pursuant to a plan of merger approved in the manner provided in this Act.

B. Each corporation shall adopt a plan of merger setting forth:

(1) The name of the corporation proposing to merge.

(2) The name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation.

(3) The terms and conditions of the proposed merger.

(4) A statement of any changes in the articles of incorporation of the surviving corporation to be affected by such merger.

(5) Such other provisions with respect to the proposed merger as are deemed necessary or desirable.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 5.01.]

Art. 1396-5.02. Procedure for Consolidation of Domestic Corporations

A. Any two or more domestic corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in this Act.

B. Each corporation shall adopt a plan of consolidation setting forth:

(1) The names of the corporations proposing to consolidate.

(2) The name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation.

(3) The terms and conditions of the proposed consolidation.

(4) With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this Act.

(5) Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 5.02.]

Art. 1396-5.03. Approval of Merger or Consolidation of Domestic Corporations

A. A plan of merger or consolidation of domestic corporations shall be adopted in the following manner:

(1) Where the members of any merging or consolidating corporation have voting rights, the board of directors of such corporations shall adopt a resolution approving the proposed plan and directing that it be submitted to a vote at the meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice setting forth the proposed plan or a summary thereof shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this Act for the giving of notice of meetings of members. The proposed plan shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting in person or by proxy are entitled to cast, unless any class of members is entitled to vote as a class thereon by the terms of the articles of incorporation or of the by-laws, in which event as to such corporations the proposed plan shall not be adopted unless it also receives at least two-thirds of the votes which members of each such class who are present at such meeting in person or by proxy are entitled to cast.

(2) Where any merging or consolidating corporation has no members, or no members having voting rights, a plan of merger or consolidation shall be adopted at a meeting of the board of directors of such corporation upon receiving the vote of a majority of the directors in office.

(3) Where the management of the affairs of any merging or consolidating corporation is vested in its members pursuant to Article 2.14C of this Act,¹ the proposed plan shall be submitted to a vote at a meeting of the members, which may be an annual, a regular, or a special meeting. Except as otherwise provided in the articles of incorporation or the by-laws, notice setting forth the proposed plan or a summary thereof shall be given to the members within the time and in the manner provided in this

Act for the giving of notice of meetings of members. The proposed plan shall be adopted upon receiving at least two-thirds of the votes of the members present at such meeting.

B. After such approval, and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 5.03.]

¹ Article 1396-2.14C.

Art. 1396-5.04. Articles of Merger or Consolidation of Domestic Corporations

A. Upon such approval, articles of merger or articles of consolidation shall be executed by each corporation by its president or a vice-president and by its secretary or an assistant secretary, and verified by one of the officers of each corporation signing such articles, and shall set forth:

(1) The plan of merger or the plan of consolidation.

(2) Where the members of any merging or consolidating corporation have voting rights, then as to each corporation (a) a statement setting forth the date of the meeting of members at which the plan was adopted, that a quorum was present at such meeting, and that such plan received at least two-thirds of the votes which members present at such meeting in person or by proxy were entitled to cast, as well as, in the case of any class entitled to vote as a class thereon by the terms of the articles of incorporation or of the by-laws, at least two-thirds of the votes which members of any such class who were present at such meeting in person or by proxy were entitled to cast, or (b) a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto.

(3) Where any merging or consolidating corporation has no members, or no members having voting rights, then as to each such corporation a statement of such fact, the date of the meeting of the board of directors at which the plan was adopted and a statement of the fact that such plan received the vote of a majority of the directors in office.

B. The original and a copy of the articles of merger or articles of consolidation shall be delivered to the Secretary of State. If the Secretary of State finds that such articles conform to law, he shall, when all fees have been paid as in this Act prescribed:

(1) Endorse on the original and the copy the word "Filed," and the month, day and year of the filing thereof.

(2) File the original in his office.

(3) Issue a certificate of merger or a certificate of consolidation to which he shall affix the copy.

C. The certificate of merger or certificate of consolidation, together with the copy of the articles of merger or articles of consolidation affixed thereto by the Secretary of State, shall be returned to the surviving or new corporation, as the case may be, or its representative.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 5.04. Amended by Acts 1979, 66th Leg., p. 216, ch. 120, § 8, eff. May 9, 1979.]

Art. 1396-5.05. Effective Date of Merger or Consolidation of Domestic Corporations

A. Upon the issuance of the certificate of merger or the certificate of consolidation by the Secretary of State, the merger or consolidation of domestic corporations shall be effected.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 5.05.]

Art. 1396-5.06. Effect of Merger or Consolidation of Domestic Corporations

A. When such merger or consolidation of domestic corporations has been effected:

(1) The several corporations parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of consolidation, shall be the new corporation provided for in the plan of consolidation.

(2) The separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease.

(3) Such surviving or new corporation shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under this Act.

(4) Such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities and franchises, as well of a public as of a private nature, of each of the merging or consolidating corporations; and all property, real, personal and mixed, and all debts due on whatever account, and all other choses in action, and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed.

(5) Such surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated; and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted as if such merger or consolidation had not taken place, or such

surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporations shall be impaired by such merger or consolidation.

(6) In the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the plan of merger; and, in the case of a consolidation, the statements set forth in the articles of consolidation and which are required or are permitted to be set forth in the articles of incorporation of corporations organized under this Act shall be deemed to be the articles of incorporation of the new corporation.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 5.06.]

Art. 1396-5.07. Merger or Consolidation of Domestic and Foreign Corporations

A. One or more foreign corporations and one or more domestic corporations may be merged or consolidated, if such merger or consolidation is permitted by the laws of the State under which each such foreign corporation is organized. In the case of merger, the surviving corporation may be any one of the constituent corporations and shall be deemed to continue to exist under the laws of the state of its incorporation. In the case of consolidation, the new corporation may be a corporation organized under the laws of any state under which any of the constituent corporations was organized.

B. Such merger or consolidation shall be carried out in the following manner:

(1) Each domestic corporation shall comply with the provisions of this Act with respect to merger or consolidation, as the case may be, of domestic corporations, except that if the surviving or new corporation is to be a foreign corporation, the plan of merger or consolidation shall specify the state under whose laws such surviving or new corporation is to be governed and the post office address of the registered or principal office of such surviving or new corporation in the state under whose laws it is to be governed; provided, however, that no domestic corporation shall be merged or consolidated with a foreign corporation unless and until a resolution authorizing such merger or consolidation shall receive, at a meeting of members of the domestic corporation, called and conducted in the same manner as provided by Article 5.03 of this Act, at least two-thirds ($\frac{2}{3}$) of the votes which members present at such meeting in person or by proxy are entitled to cast, and provided further that if any class of members is entitled to vote as a class thereon by the terms of the articles of incorporation or of the by-laws, as to such corporation the resolution shall not be adopted unless it shall also receive at least two-thirds of the votes which members of each such class who are present at such meeting in person or

by proxy are entitled to cast, and provided further that if such a domestic corporation has no members, or no members having voting rights, the plan of merger or consolidation shall be adopted at a meeting of the board of directors of such corporation upon receiving the vote of a majority of the directors in office.

(2) If the surviving or new corporation, as the case may be, is a foreign corporation, it shall comply with the provisions of this Act with respect to foreign corporations if it is to transact business in this State, and in every case it shall file with the Secretary of State of this State:

(a) An agreement that it may be served with process in this State in any proceeding for the enforcement of any obligation of any domestic corporation which was a party to such merger or consolidation.

(b) An irrevocable appointment of the Secretary of State of this State as its agent to accept service of process in any such proceeding.

(3) Upon compliance by each domestic and foreign corporation which is a party to the merger or consolidation with the provisions of this Act with respect to merger or consolidation, and upon issuance by the Secretary of State of this State of the certificate of merger or the certificate of consolidation provided for in this Act, the merger or consolidation shall be effected in this State.

C. The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, if the surviving or new corporation is a domestic corporation. If the surviving or new corporation is a foreign corporation, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except in so far as the laws of such other state provide otherwise.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 5.07. Amended by Acts 1981, 67th Leg., p. 832, ch. 297, § 3, eff. Aug. 31, 1981.]

Art. 1396-5.08. Conveyance by Corporation

A. Any corporation may convey land by deed, with or without the seal of the corporation, signed by the president or vice-president or attorney in fact of the corporation when authorized by appropriate resolution of the board of directors or members. Such deed, when acknowledged by such officer or attorney in fact to be the act of the corporation, or proved in the manner prescribed for other conveyances of lands, may be recorded in like manner and with the same effect as other deeds. Any such deed when recorded, if signed by the president or any vice-president of the corporation, shall consti-

tute prima facie evidence that such resolution of the board of directors or members was duly adopted. [Acts 1959, 56th Leg., p. 286, ch. 162, art. 5.08.]

Art. 1396-5.09. Sale, Lease or Exchange of Assets

A. A sale, lease or exchange of all, or substantially all, the property and assets of a corporation, may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any corporation for profit, domestic or foreign, as may be authorized in the following manner:

(1) Where there are members having voting rights, the board of directors shall adopt a resolution recommending such sale, lease, or exchange, and directing the submission thereof to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the sale, lease, or exchange of all, or substantially all, the property and assets of the corporation shall be given to each member entitled to vote at such meeting, within the time and in the manner provided by this Act for the giving of notice of meetings of members. At such meeting the members may authorize such sale, lease, or exchange, and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require at least two-thirds ($\frac{2}{3}$) of the votes which members present at such meeting in person or by proxy are entitled to cast, unless any class of members is entitled to vote as a class thereon by the terms of the articles of incorporation or of the by-laws in which event such authorization shall also require at least two-thirds ($\frac{2}{3}$) of the votes which members of each such class who are present at such meeting in person or by proxy are entitled to cast. After such authorization by vote of members, the board of directors, nevertheless, in its discretion, may abandon such sale, lease, or exchange of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by members.

(2) Unless otherwise provided in the articles of incorporation, where there are no members, or no members having voting rights, a sale, lease, or exchange of all, or substantially all, the property and assets of a corporation shall be authorized upon receiving the vote of a majority of the directors in office.

(3) Where the management of the affairs of a corporation vested in its members pursuant to Article 2.14C of this Act,¹ a resolution authorizing such sale, lease, or exchange shall be submitted to a vote

at a meeting of the members, which may be an annual, a regular, or a special meeting. Except as otherwise provided in the articles of incorporation or the by-laws, notice stating that the purpose or one of the purposes of such meeting is to consider the sale, lease, or exchange of all, or substantially all, the property and assets of the corporation shall be given to the members, within the time and in the manner provided by this Act for the giving of notice of meetings of members. At such meeting, the members may authorize such sale, lease, or exchange, and may fix, or authorize one or more of its members to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require at least two-thirds of the votes of the members present at such meeting.

(4) Except as otherwise provided in the articles of incorporation, the board of directors may authorize any pledge, mortgage, deed of trust, or trust indenture and no authorization or consent of members shall be required for the validity thereof or for any sale pursuant to the terms thereof; provided that where the management of the affairs of the corporation is vested in its members pursuant to Article 2.14C of this Act, the members may authorize any pledge, mortgage, deed of trust, or trust indenture in the same manner as provided in Subsection (3) of this Section, and no authorization by the board of directors shall be required for the validity thereof or for any sale pursuant to the terms thereof.

(5) Notwithstanding the provisions of Subsection (1) of this Section, when the corporation is insolvent, a sale, lease, or exchange of all, or substantially all, the property and assets of a corporation shall be authorized upon receiving the vote of a majority of the directors in office.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 5.09.]

¹ Article 1396-2.14C.

Art. 1396-6.01. Voluntary Dissolution

A. A corporation may dissolve and wind up its affairs in the following manner:

(1) Where there are members having voting rights, the board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of such dissolution be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of dissolving the corporation, shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this Act for the giving of notice of meetings of members. A resolution to dissolve the corporation shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting in person or by

proxy are entitled to cast, unless any class of members is entitled to vote as a class thereon by the terms of the articles of incorporation or of the by-laws, in which event the resolution shall not be adopted unless it also receives at least two-thirds of the votes which members of each such class who are present at such meeting in person or by proxy are entitled to cast.

(2) Where there are no members, or no members having voting rights, the dissolution of the corporation shall be authorized at a meeting of the board of directors upon the adoption of a resolution to dissolve by the vote of a majority of the directors in office.

(3) Where the management of the affairs of the corporation is vested in the members pursuant to Article 2.14C of this Act,¹ a resolution that the corporation be dissolved shall be submitted to a vote at a meeting of members, which may be an annual, a regular, or a special meeting. Except as otherwise provided in the articles of incorporation or the by-laws, notice stating that the purpose or one of the purposes of such meeting is to consider the advisability of dissolving the corporation shall be given to the members, within the time and in the manner provided in this Act for the giving of notice of meetings of members. A resolution to dissolve the corporation shall be adopted upon receiving at least two-thirds of the votes of members present at such meeting.

B. Upon the adoption of such resolution by the members, or by the board of directors where there are no members or no members having voting rights, the corporation shall cease to conduct its affairs except in so far as may be necessary for the winding up thereof, shall immediately cause a notice of the proposed dissolution to be mailed to each known creditor of and claimant against the corporation, and shall proceed to collect its assets and apply and distribute them as provided in this Act.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 6.01.]

¹ Article 1396-2.14C.

Art. 1396-6.02. Application and Distribution of Assets

A. The assets of a corporation in the process of dissolution shall be applied and distributed as follows:

(1) All liabilities and obligations of the corporation shall be paid, satisfied and discharged; in case its property and assets are not sufficient to satisfy or discharge all the corporation's liabilities and obligations, the corporation shall apply them so far as they will go to the just and equitable payment of the liabilities and obligations.

(2) Assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, shall be

returned, transferred or conveyed in accordance with such requirements.

(3) Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, together with any income earned thereon shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving corporation, pursuant to a plan of distribution adopted as provided in this Act.

(4) Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the by-laws to the extent that the articles of incorporation or by-laws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others.

(5) Any remaining assets may be distributed to such persons, societies, organizations or domestic or foreign corporations, whether for profit or not for profit, as may be specified in a plan of distribution adopted as provided in this Act.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 6.02.]

Art. 1396-6.03. Plan of Distribution

A. A plan providing for the distribution of assets, not inconsistent with the provisions of this Act, may be adopted by a corporation in the process of dissolution and shall be adopted by a corporation for the purpose of authorizing any transfer or conveyance of assets for which this Act requires a plan of distribution, in the following manner:

(1) Where there are members having voting rights, the board of directors shall adopt a resolution recommending a plan of distribution and directing the submission thereof to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice setting forth the proposed plan of distribution or a summary thereof shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this Act for the giving of notice of meetings of members. Such plan of distribution shall be adopted upon receiving at least two-thirds ($\frac{2}{3}$) of the votes which members present at such meeting in person or by proxy are entitled to cast, unless any class of members is entitled to vote as a class thereon by the terms of the articles of incorporation or of the by-laws, in which event the proposed plan shall not be adopted unless it also receives at least two-thirds of the votes which members of each such class who are present at such meeting in person or by proxy are entitled to cast.

(2) Where there are no members, or no members having voting rights, a plan of distribution shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

(3) Where the management of the affairs of the corporation is vested in its members pursuant to Article 2.14C of this Act,¹ a proposed plan of distribution shall be submitted to a vote at a meeting of the members, which may be an annual, a regular, or a special meeting. Except as otherwise provided in the articles of incorporation or the by-laws, notice setting forth the proposed plan of distribution or a summary thereof shall be given to the members within the time and in the manner provided in this Act for the giving of notice of meetings of members. Such plan of distribution shall be adopted upon receiving at least two-thirds of the votes of the members present at such meeting.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 6.03.]

¹ Article 1396-2.14C.

Art. 1396-6.04. Revocation of Voluntary Dissolution Proceedings

A. A corporation may, at any time prior to the issuance of a certificate of dissolution by the Secretary of State, revoke the action theretofore taken to dissolve the corporation, in the following manner:

(1) Where there are members having voting rights, the board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and directing that the question of such revocation be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of revoking the voluntary dissolution proceedings, shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this Act for the giving of notice of meetings of members. A resolution to revoke the voluntary dissolution proceedings shall be adopted upon receiving at least two-thirds ($\frac{2}{3}$) of the votes which members present at such meeting in person or by proxy are entitled to cast, unless any class of members is entitled to vote as a class thereon by the terms of the articles of incorporation or of the by-laws, in which event the proposed resolution shall not be adopted unless it also receives at least two-thirds ($\frac{2}{3}$) of the votes which members of each such class who are present at such meeting in person or by proxy are entitled to cast.

(2) Where there are no members, or no members having voting rights, a resolution to revoke the voluntary dissolution proceedings shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

(3) Where the management of the affairs of the corporation is vested in its members pursuant to Article 2.14C of this Act,¹ a resolution that the voluntary dissolution proceedings be revoked shall be submitted to a vote at a meeting of the members, which may be an annual, a regular, or a special meeting. Except as otherwise provided in the articles of incorporation or the by-laws, notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of revoking the voluntary dissolution proceedings shall be given to the members, within the time and in the manner provided in this Act for the giving of notice of meetings of members. A resolution to revoke the voluntary dissolution proceedings shall be adopted upon receiving at least two-thirds ($\frac{2}{3}$) of the votes of the members present at such meeting.

B. Upon the adoption of such resolution by the members, or by the board of directors where there are no members or no members having voting rights, the corporation may thereupon again conduct its affairs.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 6.04.]

¹ Article 1396-2.14C.

Art. 1396-6.05. Article of Dissolution

A. If voluntary dissolution proceedings have not been revoked, then when all debts, liabilities and obligations of the corporation have been paid and discharged, or adequate provision has been made therefor, or, in case its property and assets are not sufficient to satisfy and discharge all the corporation's liabilities and obligations, then when all the property and assets have been applied so far as they will go to the just and equitable payment of the corporation's liabilities and obligations, and all of the remaining property and assets of the corporation have been transferred, conveyed or distributed in accordance with the provisions of this Act, articles of dissolution shall be executed by the corporation by its president or a vice-president, and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:

(1) The name of the corporation.

(2) Where there are members having voting rights, (a) a statement setting forth the date of the meeting of members at which the resolution to dissolve was adopted, that a quorum was present at such meeting, and that such resolution received at least two-thirds ($\frac{2}{3}$) of the votes which members present at such meeting in person or by proxy were entitled to cast, as well as, in the case of any class entitled to vote as a class thereon by the terms of the articles of incorporation or of the by-laws, at least two-thirds ($\frac{2}{3}$) of the votes which members of any such class who were present at such meeting in person or by proxy were entitled to cast, or (b) a statement that such resolution was adopted by a

consent in writing signed by all members entitled to vote with respect thereto.

(3) Where there are no members, or no members having voting rights, a statement of such fact, the date of the meeting of the board of directors at which the resolution to dissolve was adopted and a statement of the fact that such resolution received the vote of a majority of the directors in office.

(4) That all debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor, or, in case the corporation's property and assets were not sufficient to satisfy and discharge all its liabilities and obligations, that all the property and assets have been applied so far as they would go to the payment thereof in a just and equitable manner and that no property or assets remained available for distribution among its members.

(5) That all the remaining property and assets of the corporation have been transferred, conveyed or distributed in accordance with the provisions of this Act; provided, however, that if assets were received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, there shall also be set forth a copy of the plan of distribution adopted as provided in this Act for the distribution of such assets, and a statement that distribution has been effected in accordance with such plan.

(6) That there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order or decree which may be entered against it in any pending suit.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 6.05. Amended by Acts 1979, 66th Leg., p. 216, ch. 120, § 9, eff. May 9, 1979.]

Art. 1396-6.06. Filing of Articles of Dissolution

A. The original and a copy of such articles of dissolution shall be delivered to the Secretary of State. If the Secretary of State finds that such articles of dissolution conform to law, he shall, when all fees have been paid as in this Act prescribed:

(1) Endorse on the original and the copy the word "Filed," and the month, day and year of the filing thereof.

(2) File the original in his office.

(3) Issue a certificate of dissolution to which he shall affix the copy.

B. The certificate of dissolution, together with the copy of the articles of dissolution affixed thereto by the Secretary of State, shall be returned to the

representative of the dissolved corporation. Upon the issuance of such certificate of dissolution the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action by members, directors and officers as provided in this Act.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 6.06. Amended by Acts 1979, 66th Leg., p. 217, ch. 120, § 10, eff. May 9, 1979.]

Art. 1396-7.01. Involuntary Dissolution; Reinstatement

A. A corporation may be dissolved involuntarily by a decree of the district court of the county in which the registered office of the corporation is situated or of any district court in Travis County in an action filed by the Attorney General when it is established that it is in default in any of the following particulars:

(1) The corporation or its incorporators have failed to comply with a condition precedent to incorporation; or

(2) The original articles of incorporation or any amendments thereof were procured through fraud; or

(3) The corporation has continued to transact business beyond the scope of the purpose or purposes of the corporation as expressed in its articles of incorporation; or

(4) A misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation pursuant to this Act.

B. A corporation may be dissolved involuntarily by order of the Secretary of State when it is established that it is in default in any of the following particulars:

(1) The corporation has failed to file any report within the time required by law, or has failed to pay any fees, franchise taxes or penalties prescribed by law when the same have become due and payable;

(2) The corporation has failed to maintain a registered agent in this state as required by law; or

(3) The corporation has failed to pay the filing fee for its articles of incorporation, or the fee was paid by an instrument that was dishonored when presented by the state for payment.

C. (1) No corporation shall be involuntarily dissolved under Subsection (1) or (2) of Section B hereof unless the Secretary of State, or other state agency with which such report, fees, taxes or penalties is required to be made, gives the corporation not less than 90 days notice of its neglect, delinquency, or omission by certified mail addressed to its registered office or to its principal place of business, or to the last known address of one of its officers or directors, or to any other known place of

business of said corporation, and the corporation has failed prior to such involuntary dissolution to correct the neglect, omission or delinquency.

(2) When a corporation is involuntarily dissolved under Subsection (3) of Section B of this article, the Secretary of State shall give the corporation notice of the dissolution by regular mail addressed to its registered office, its principal place of business, the last known address of one of its officers or directors, or any other known place of business of the corporation.

D. Whenever a corporation has given cause for involuntary dissolution and has failed to correct the neglect, omission or delinquency as provided in Sections B and C, the Secretary of State shall thereupon dissolve the corporation by issuing a certificate of involuntary dissolution, which shall include the fact of such involuntary dissolution and the date and cause thereof. The original of such certificate shall be placed in his office and a copy thereof mailed to the corporation at its registered office, or to its principal place of business, or to the last known address of one of its officers or directors, or to any other known place of business of said corporation. Upon the issuance of such certificate of involuntary dissolution, the existence of the corporation shall cease, except for purposes otherwise provided by law.

E. Any corporation dissolved by the Secretary of State under the provisions of Section B of this article may be reinstated by the Secretary of State at any time within a period of 12 months from the date of such dissolution, upon approval of an application for reinstatement signed by an officer or director of the dissolved corporation. Such application shall be filed by the Secretary of State whenever it is established to his satisfaction that in fact there was no cause for the dissolution, or whenever the neglect, omission or delinquency resulting in dissolution has been corrected and payment made of all fees, taxes, penalties and interest due thereon which accrued before the dissolution plus an amount equal to the total taxes from the date of dissolution to the date of reinstatement which would have been payable had the corporation not been dissolved. A reinstatement filing fee of \$25.00 shall accompany the application for reinstatement.

Reinstatement shall not be authorized if the corporate name is the same as or deceptively similar to a corporate name already on file or reserved or registered, unless the corporation being reinstated contemporaneously amends the articles of incorporation to change its name.

When the application for reinstatement is approved and filed by the Secretary of State, the corporate existence shall be deemed to have continued without interruption from the date of dissolution except the reinstatement shall have no effect upon any issue of personal liability of the directors,

officers, or agents of the corporation during the period between dissolution and reinstatement.

F. When a corporation is convicted of a felony, or when a high managerial agent is convicted of a felony in the conduct of the affairs of the corporation, the Attorney General may file an action to involuntarily dissolve the corporation in a district court of the county in which the registered office of the corporation is situated or in a district court of Travis County. The court may dissolve the corporation involuntarily if it is established that:

(1) The corporation, or a high managerial agent acting in behalf of the corporation, has engaged in a persistent course of felonious conduct; and

(2) To prevent future felonious conduct of the same character, the public interest requires such dissolution.

G. Article 7.02 of this Act does not apply to Section F of this article.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 7.01. Amended by Acts 1965, 59th Leg., p. 533, ch. 276, §§ 1, 2, eff. Aug. 30, 1965; Acts 1969, 61st Leg., p. 2477, ch. 834, § 3, eff. June 18, 1969; Acts 1973, 63rd Leg., p. 990, ch. 399, § 2(M), eff. Jan. 1, 1974; Acts 1981, 67th Leg., p. 833, ch. 297, § 4, eff. Aug. 31, 1981.]

Art. 1396-7.02. Notification to Attorney General, Notice to Corporation and Opportunity to Cure Default

A. The Secretary of State shall certify to the Attorney General, from time to time, the names of all corporations which have given cause for judicial dissolution of their charters or revocation of their certificates of authority as provided in this Act, together with the facts pertinent thereto. Every such certificate from the Secretary of State to the Attorney General shall be taken and received in all courts as prima facie evidence of the facts therein stated.

B. Whenever the Secretary of State shall certify the name of any such corporation to the Attorney General as having given any cause for dissolution or revocation of its certificate of authority, the Secretary of State shall concurrently mail to such corporation at its registered office in this State a notice that such certification has been made and the grounds therefor. A record of the date of mailing such notice shall be kept in the office of the Secretary of State, and a certificate by the Secretary of State that such notice was mailed as indicated by such record shall be taken and received in all courts as prima facie evidence of the facts therein stated.

C. If at the expiration of thirty (30) days after the date of such mailing the corporation has not cured the defaults so certified by the Secretary of State, the Attorney General may then file an action in the name of the State against such corporation

for its dissolution or revocation of its certificate of authority, as the case may be.

D. If, after any such action is filed but before judgment is pronounced in the district court, the corporation against whom such action has been filed shall cure its default and pay the costs of such action, the action shall abate.

E. If, after the issues made in any such action have been heard by the court trying same and it is found that the corporate defendant has been guilty of any default of such nature as to justify its dissolution or revocation of its certificate of authority as provided in this Act, the court shall without rendering or entering any judgment for a period of five (5) days pending the filing of an action upon a sworn application for stay of judgment as hereinafter provided, promptly pronounce its findings to such effect. If the corporation has proved by a preponderance of the evidence that the defaults of which the corporation has been found guilty were neither willful nor the result of failure to take reasonable precautions and has procured a finding to such effect it may promptly make sworn application to the court for a stay of entry of judgment in order to allow the corporation reasonable opportunity to cure the defaults of which it has been found guilty. If the court is reasonably satisfied on the basis of the corporation's sworn application and any evidence heard in support of or opposed to the application that the corporation is able and intends in good faith to cure the defaults of which it has been found guilty and that such stay is not applied for without just cause, the court shall grant such application and stay entry of judgment for such time as in the discretion of the court is reasonably necessary to afford the corporation opportunity to cure such defaults if it acts with reasonable diligence, but in no event shall such stay be for more than sixty (60) days after the date of the pronouncement of the court's findings. If during such period of time as shall be allowed by the court the corporation shall cure its defaults and pay the costs of such action, the court shall then enter judgment dismissing the action. If the corporation does not satisfy the court that it has cured its default within said period of time, the court shall enter final judgment at the expiration thereof.

F. If the corporation does not make application for stay of such judgment but does appeal therefrom and the trial court's judgment is affirmed and if the appellate court is satisfied that the appeal was taken in good faith and not for purpose of delay or with no sufficient cause and further finds that the defaults of which the corporation has been adjudged guilty are capable of being cured, it shall, if the appealing corporation has so prayed, remand the case to the trial court with instructions to grant the corporation opportunity to cure such defaults, such cure to be accomplished within such time after

issuance of the mandate as the appellate court shall determine but in no event more than sixty (60) days thereafter. If during such period of time as shall have been so allowed the corporation shall cure such defaults and pay all costs accrued in such action, the trial court shall then enter judgment dismissing such action. If the corporation does not satisfy the trial court that it has cured its defaults within such period of time, the judgment shall thereupon become final.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 7.02. Amended by Acts 1965, 59th Leg., p. 533, ch. 276, § 3, eff. Aug. 30, 1965; Acts 1969, 61st Leg., p. 2477, ch. 834, § 4, eff. June 18, 1969.]

Art. 1396-7.03. Venue and Process

A. Every action for the involuntary dissolution of a domestic corporation or revocation of the certificate of authority of a foreign corporation shall be commenced by the Attorney General either in the district court of the county in which the registered office of the corporation in this State is situated, or in any district court of Travis County. Citation shall issue and be served as provided by law. If process is returned not found, the Attorney General shall cause publication to be made as in other civil cases in some newspaper published in the county where the registered office of the corporation in this State is situated, containing a notice of the pendency of such action, the title of the court, the title of the action, and the date on or after which default judgment may be entered. The Attorney General may include in one notice the name of any number of such corporations against which such actions are then pending in the same court. The Attorney General shall cause a copy of such notice to be mailed to the corporation at its registered office in this State within ten days after the first publication thereof. The certificate of the Attorney General of the mailing of such notice shall be prima facie evidence thereof. Such notice shall be published at least once a week for two consecutive weeks, and the first publication thereof may begin at any time after the citation has been returned. Unless a corporation shall have been served with citation, no default judgment shall be taken against it earlier than thirty days after the first publication of such notice.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 7.03.]

Art. 1396-7.04. Appointment of Receiver for Specific Corporate Assets

A. A receiver may be appointed by any court having jurisdiction of the subject matter for specific corporate assets located within the State, whether owned by a domestic or a foreign corporation, which are involved in litigation, whenever circumstances exist deemed by the court to require the appointment of a receiver to conserve such assets and to avoid damage to parties at interest, but only if all

other requirements of law are complied with and if other remedies available either at law or in equity are determined by the court to be inadequate and only in the following instances:

(1) In an action by a vendor to vacate a fraudulent purchase of property; or by a creditor to subject any property or fund to his claim; or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff or any party whose right to or interest in the property or fund or the proceeds thereof is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured.

(2) In an action by a mortgagee for the foreclosure of his mortgage and sale of the mortgaged property, when it appears that the mortgaged property is in danger of being lost, removed, or materially injured, or that the condition to the mortgage has not been performed and that the property is probably insufficient to discharge the mortgage debt.

(3) In any other actions where receivers for specific assets have heretofore been appointed by the usage of the court of equity.

B. The court appointing such receiver shall have and retain exclusive jurisdiction over the specific assets placed in receivership and shall determine the rights of the parties in these assets or their proceeds.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 7.04.]

Art. 1396-7.05. Appointment of Receiver to Rehabilitate Corporation

A. A receiver may be appointed for the assets and business of a corporation by the district court for the county in which the registered office of the corporation is located, whenever circumstances exist deemed by the court to require the appointment of a receiver to conserve the assets and affairs of the corporation and to avoid damage to parties at interest, but only if all other requirements of law are complied with and if all other remedies available either at law or in equity, including the appointment of a receiver for specific assets of the corporation, are determined by the court to be inadequate, and only in the following instances:

(1) In an action by a member when it is established:

(a) That the corporation is insolvent or in imminent danger of insolvency; or

(b) That the directors are deadlocked in the management of the corporate affairs and the members are unable to break the deadlock, and that irreparable injury to the corporation is being suffered or is threatened by reason thereof; or

(c) That the acts of the directors or those in control of the corporation are illegal, oppressive or fraudulent; or

(d) That the corporate assets are being misapplied or wasted.

(2) In an action by a creditor when it is established:

(a) That the corporation is insolvent and the claim of the creditor has been reduced to judgment and an execution thereon returned unsatisfied; or

(b) That the corporation is insolvent and the corporation has admitted in writing that the claim of the creditor is due and owing.

(3) In any other actions where receivers have heretofore been appointed by the usages of the court of equity.

B. In the event that the condition of the corporation necessitating such an appointment of a receiver is remedied, the receivership shall be terminated forthwith and the management of the corporation shall be restored to the directors and officers, the receiver being directed to redeliver to the corporation all its remaining properties and assets.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 7.05.]

Art. 1396-7.06. Jurisdiction of Court to Liquidate Assets and Affairs of Corporation and Receiverships Therefor

A. The district court for the county in which the registered office of a corporation is located may order the liquidation of the assets and affairs of the corporation and may appoint a receiver to effect such liquidation, whenever circumstances demand liquidation in order to avoid damage to parties at interest, but only if all other requirements of law are complied with and if all other remedies available either at law or in equity, including the appointment of a receiver of specific assets of the corporation and appointment of a receiver to rehabilitate the corporation, are determined by the court to be inadequate and only in the following instances:

(1) When an action has been filed by the Attorney General, as provided in this Act, to dissolve a corporation and it is established that liquidation of its affairs should precede the entry of a decree of dissolution.

(2) Upon application by a corporation to have its liquidation continued under the supervision of the court.

(3) If the corporation is in receivership and no plan for remedying the condition of the corporation requiring appointment of the receiver, which the court finds to be feasible, has been presented within twelve (12) months after the appointment of the receiver.

(4) Upon application of any creditor if it is established that irreparable damage will ensue to the unsecured creditors of the corporation, generally, as a class, unless there be an immediate liquidation of the assets of the corporation.

(5) Upon application by a member or director when it is made to appear that the corporation is unable to carry out its purposes.

B. The assets of the corporation or the proceeds resulting from a sale, conveyance, or other disposition thereof shall be applied and distributed as follows:

(1) All costs and expenses of the court proceedings and all liabilities and obligations of the corporation shall be paid, satisfied and discharged, or adequate provision shall be made therefor;

(2) Assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution or liquidation, shall be returned, transferred or conveyed in accordance with such requirements;

(3) Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution or liquidation, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving or liquidating corporation as the court may direct;

(4) Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the by-laws to the extent that the articles of incorporation or by-laws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others;

(5) Any remaining assets may be distributed to such persons, societies, organizations or domestic or foreign corporations, whether for profit or not for profit, specified in the plan of distribution adopted as provided in this Act, or where no plan of distribution has been adopted, as the court may direct.

C. In the event the condition of the corporation necessitating the appointment of a receiver is remedied, the receivership shall be terminated forthwith and the management of the corporation shall be restored to the directors and the officers, the receiver being directed to re-deliver to the corporation all its remaining properties and assets.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 7.06.]

Art. 1396-7.07. Qualification, Powers, and Duties of Receivers; Other Provisions Relating to Receiverships

A. No receiver shall be appointed for any corporation in which this Act applies or for any of its assets or for its business except as provided for and on the conditions set forth in this Act. A receiver shall in all cases be a citizen of the United States or a corporation authorized to act as receiver, which corporation may be a domestic corporation or a foreign corporation authorized to transact business in this State, and shall in all cases give such bond as the court may direct with such sureties as the court may require.

B. A receiver appointed by authority of this Act shall have authority to sue and be sued in all courts in his own name and shall have those powers and duties provided by laws of general applicability relating to receivers and in addition thereto may be accorded such other powers and duties as the court shall deem appropriate to accomplish the objectives for which the receiver was appointed. Such additional and unusual powers and duties shall be stated in the order appointing the receiver and may be increased or diminished at any time during the proceedings.

C. In proceedings involving any receivership of the assets or business of a corporation, the court may require all creditors of the corporation to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs of their respective claims under oath. If the court requires the filing of claims, it shall fix a date as the last day for the filing thereof, which shall be not less than four months from the date of the order, and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the court may extend the time for the filing of claims. Creditors and claimants failing to file proofs of claim on or before the date fixed therefor may be barred, by order of court (unless presenting to the court a justifiable excuse for delay in the filing), from participating in the distribution of the assets of the corporation but no discharge shall be decreed or effected.

D. The court shall have power from time to time to make allowances to the receiver or receivers and to attorneys in the proceeding, and to direct the payment thereof out of the assets of the corporation within the scope of the receivership or the proceeds of any sale or disposition of such assets.

E. A court authorized to appoint a receiver for a corporation to which this Act applies, and no other court in this State, shall be authorized to appoint a receiver for the corporation or its assets and business; when such a court does appoint a receiver, as authorized by this Act, for the corporation or its assets and business, that court shall have exclusive

jurisdiction of the corporation and all its properties, wherever situated.

F. Notwithstanding any provision of this Article or in this Act to the contrary, the district court for the county in which the registered office of any foreign corporation doing business in this State is located shall have jurisdiction to appoint an ancillary receiver for the assets and business of such corporation, to serve ancillary to the receiver for the assets and business of the corporation acting under orders of a court having jurisdiction to appoint such a receiver for the corporation, located in any other state, whenever circumstances exist deemed by the court to require the appointment of such ancillary receiver. Moreover, such district court, whenever circumstances exist deemed by it to require the appointment of a receiver for all the assets in and out of this State, and the business of a foreign corporation doing business in this State, in accordance with the ordinary usages of equity, may appoint such a receiver for all its assets in and out of this State, and its business, even though no receiver has been appointed elsewhere; such receivership shall be converted into an ancillary receivership when deemed appropriate by such district court in the light of orders entered by a court of competent jurisdiction in some other state, providing for a receivership of all assets and business of such corporation.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 7.07.]

Art. 1396-7.08. Directors and Members not Necessary Parties Defendant to Receivership or Liquidation Proceedings

A. It shall not be necessary to make directors or members parties to any action or proceeding for involuntary dissolution, receivership or liquidation of the assets and business of a corporation unless relief is sought against them personally.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 7.08.]

Art. 1396-7.09. Decree of Involuntary Dissolution

A. In proceedings to liquidate the assets and affairs of a corporation, when the costs and expenses of such proceedings and all debts, obligations, and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed in accordance with the provisions of this Act, or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts, and obligations, when all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 7.09.]

Art. 1396-7.10. Filing of Decree of Dissolution

A. In any case in which the court shall enter a decree dissolving a corporation it shall be the duty of the clerk of such court to cause a certified copy of the decree to be filed with the Secretary of State. No fee shall be charged by the Secretary of State for the filing thereof.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 7.10.]

Art. 1396-7.11. Deposit with State Treasurer of Amount Due Certain Persons

A. Upon the voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to a creditor or member or other person who is unknown or cannot be found after the exercise of reasonable diligence by the person or persons responsible for the distribution in liquidation of the corporation's assets shall be reduced to cash and deposited with the State Treasurer, together with a statement giving the name of the person, if known, entitled to such fund, his last known address, the amount of his distributive portion, and such other information about such person as the State Treasurer may reasonably require, whereupon the person or persons responsible for the distribution in liquidation of the corporation's assets shall be released and discharged from any further liability with respect to the funds so deposited. The State Treasurer shall issue his receipt for such fund and shall deposit same in a special account to be maintained by him.

B. On receipt of satisfactory written and verified proof of ownership or of right to such fund within seven (7) years from the date such fund was so deposited, the State Treasurer shall certify such fact to the Comptroller of Public Accounts, who shall issue proper warrant therefor drawn on the State Treasurer in favor of the person or persons then entitled thereto. If no claimant has made satisfactory proof of rights to such fund within seven (7) years from the time of such deposit the State Treasurer shall then cause to be published in one issue of a newspaper of general circulation in Travis County, Texas, a notice of the proposed escheat of such fund, giving the name of the creditor or shareholder apparently entitled thereto, his last known address, if any, the amount of the fund so deposited, and the name of the dissolved corporation from whose assets such fund was derived. If no claimant makes satisfactory proof of right to such fund within two months from the time of such publication, the fund so unclaimed shall thereupon automatically escheat to and become the property of the General Revenue Fund of the State of Texas.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 7.11.]

Art. 1396-7.12. Survival of Remedy After Dissolution

A. The dissolution of a corporation either (1) by the issuance of a certificate of dissolution by the

Secretary of State, or (2) by a decree of court when the court has not liquidated the assets and affairs of the corporation as provided in this Act, or (3) by expiration of its period of duration, shall not take away or impair any remedy available to or against such corporation, its directors, officers, or members, for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within three (3) years after the date of such dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The members, directors and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right or claim. If such corporation was dissolved by the expiration of its period of duration, such corporation may amend its articles of incorporation at any time during such period of three (3) years so as to extend its period of duration.

Provided, however, any non-profit cemetery association whose charter expired prior to 1955 shall have until January 1, 1968 to amend its articles of incorporation so as to extend its period of duration. [Acts 1959, 56th Leg., p. 286, ch. 162, art. 7.12. Amended by Acts 1967, 60th Leg., p. 1824, ch. 704, § 1, eff. Aug. 28, 1967.]

Art. 1396-8.01. Admission of Foreign Corporations

A. No foreign corporation shall have the right to conduct affairs in this State until it shall have procured a certificate of authority so to do from the Secretary of State. No foreign corporation shall be entitled to procure a certificate of authority under this Act to conduct in this State any affairs which a corporation organized under the laws of this State is not permitted to conduct. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state or country under which such corporation is organized governing its organization and internal affairs differ from the laws of this State, and nothing in this Act contained shall be construed to authorize this State to regulate the organization of such corporation, or its internal affairs not intrastate in Texas.

B. Without excluding other activities which may not constitute conducting affairs in this State, a foreign corporation shall not be considered to be conducting affairs in this State, for the purposes of this Act, by reason of carrying on in this State any one (1) or more of the following activities:

(1) Maintaining or defending any action or suit or any administration or arbitration proceedings, or affecting the settlement thereof or the settlement of claims or disputes to which it is a party.

(2) Holding meetings of its directors or members or carrying on other activities concerning its internal affairs.

(3) Maintaining bank accounts.

(4) Voting the stock of any corporation which it has lawfully acquired.

(5) Effecting sales through independent contractors.

(6) Creating evidence of debt, mortgages, or liens on real or personal property.

(7) Securing or collecting debts due to it or enforcing any rights in property securing the same.

(8) Conducting any affairs in interstate commerce.

(9) Conducting an isolated transaction completed within a period of thirty (30) days and not in the course of a number of repeated transactions of like nature.

(10) Exercising the powers of executor or administrator of the estate of a non-resident decedent under ancillary letters issued by a court of this State, or exercising the powers of a trustee under the will of a non-resident decedent, or under a trust created by a person, corporation or association, non-resident of this State, if the exercise of such powers in such case will not involve activities which would be deemed to constitute the transacting of business in this State in the case of a foreign corporation acting in its own right.

(11) Acquiring, in transactions outside Texas, or in interstate commerce, of debts secured by mortgages or liens on real or personal property in Texas, collecting or adjusting of principal and interest payments thereon, enforcing or adjusting any rights and property securing said debts, taking any actions necessary to preserve and protect the interest of the mortgagee in said security, or any combinations of such transactions.

(12) Investing in or acquiring, in transactions outside of Texas, royalties and other non-operating mineral interests, and the execution of division orders, contracts of sale and other instruments incidental to the ownership of such non-operating mineral interests.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 8.01.]

Art. 1396-8.02. Powers of Foreign Corporations

A. A foreign corporation which shall have received a certificate of authority under this Act, shall, until its certificate of authority shall have been revoked in accordance with the provisions of this Act or until a certificate of withdrawal shall have been issued by the Secretary of State as provided in this Act, enjoy the same, but no greater, rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which such certificate of authority is issued; and, as to all matters affecting the conduct of intrastate affairs in this State, it and its officers and directors shall be subject to the same duties,

restrictions, penalties, and liabilities now or hereafter imposed upon a domestic corporation of like character and its officers and directors.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 8.02.]

Art. 1396-8.03. Corporate Name of Foreign Corporation

A. No certificate of authority shall be issued to a foreign corporation if the corporate name of such corporation:

(1) Contains any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation.

(2) Is the same as, or deceptively similar to, the name of any corporation, whether for profit or not for profit, existing under any Act of this State, or any foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this State, or a corporate name reserved or registered as permitted by the laws of this State; provided that a name may be similar if written consent is obtained from the existing corporation having the name deemed to be similar or the person, or corporation for whom the name deemed to be similar is reserved or registered in the office of the Secretary of State. A certificate of authority shall be issued as provided by this Act to any foreign corporation having a name the same as, deceptively similar to, or, if no consent is given, similar to the name of any domestic corporation existing under the laws of this State or of any foreign corporation authorized to transact business or conduct affairs in this State, or a name the exclusive right to which is, at the time, reserved or registered in accordance with this Act, provided the foreign corporation qualifies and does business under a name that meets the requirements of this article. The foreign corporation shall set forth in the application for a certificate of authority the name under which it is qualifying and shall file an assumed name certificate in accordance with Chapter 36, Business & Commerce Code, as amended.

B. When a foreign non-profit corporation that is authorized to conduct affairs in this State changes its name to one under which a certificate of authority would not be granted to it on application for a certificate, the certificate of authority of the corporation is suspended, and after the suspension the corporation may not conduct any affairs in this State until it has changed its name to a name that is available to it under the laws of this State or until it has otherwise complied with this Act.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 8.03. Amended by Acts 1981, 67th Leg., p. 834, § 5, eff. Aug. 31, 1981.]

Art. 1396-8.04. Application for Certificate of Authority

A. A foreign corporation, in order to procure a certificate of authority to conduct affairs in this State, shall make application therefor to the Secretary of State, which application shall set forth:

(1) The name of the corporation and the state or country under the laws of which it is incorporated and, if the corporation is required to qualify under a name other than its corporate name, the name under which the corporation is to be qualified.

(2) A statement that the corporation is a non-profit corporation.

(3) The date of incorporation and the period of duration of the corporation.

(4) The address of the principal office of the corporation in the state or country under the laws of which it is incorporated.

(5) The address of the proposed registered office of the corporation in this State, and the name of its proposed registered agent in this State at such address.

(6) The purpose or purposes of the corporation which it proposes to pursue in conducting its affairs in this State.

(7) The names and respective addresses of the directors and officers of the corporation.

(8) Such additional information as may be necessary or appropriate in order to enable the Secretary of State to determine whether such corporation is entitled to a certificate of authority to conduct affairs in this State.

B. Such application shall be made on forms promulgated by the Secretary of State and shall be executed by any authorized officer of the corporation and verified by such officer. The verification shall include a statement that the officer executing the application is duly authorized to do so on behalf of the corporation.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 8.04. Amended by Acts 1979, 66th Leg., p. 218, ch. 120, § 11, eff. May 9, 1979; Acts 1981, 67th Leg., p. 835, ch. 297, § 6, eff. Aug. 31, 1981.]

Art. 1396-8.05. Filing of Application for Certificate of Authority

A. The original and a copy of the application of the corporation for a certificate of authority shall be delivered to the Secretary of State, together with a certificate issued by an authorized officer of the jurisdiction of its incorporation evidencing its corporate existence. If the certificate is in a language other than English, a translation of the certificate, under oath of the translator, must be attached to the certificate. The certificate must be dated after the 91st day preceding the date on which the appli-

cation is filed. If the Secretary of State finds that such application conforms to law, he shall, when all fees have been paid as in this Act prescribed:

(1) Endorse on each of such documents the word "Filed," and the month, day and year of the filing thereof.

(2) File in his office the original application and the certificate evidencing corporate existence.

(3) Issue a certificate of authority to conduct affairs in this State to which he shall affix the copy of the application.

B. The certificate of authority, together with the copy of the application affixed thereto by the Secretary of State, shall be delivered to the corporation or its representative.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 8.05. Amended by Acts 1979, 66th Leg., p. 218, ch. 120, § 12, eff. May 9, 1979; Acts 1981, 67th Leg., p. 835, ch. 297, § 7, eff. Aug. 31, 1981.]

Art. 1396-8.06. Effect of Certificate of Authority

A. Upon the issuance of a certificate of authority by the Secretary of State, the corporation shall be authorized to conduct affairs in this State for those purposes set forth in its application, subject, however, to the right of this State to revoke such authority as provided in this Act.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 8.06.]

Art. 1396-8.07. Registered Office and Registered Agent of Foreign Corporation

A. Each foreign corporation authorized to conduct affairs in this State shall have and continuously maintain in this State:

(1) A registered office which may be, but need not be, the same as its principal office.

(2) A registered agent, which agent may be either an individual resident in this State whose business office is identical with such registered office, or a domestic corporation, whether for profit or not for profit, or a foreign corporation whether for profit or not for profit, authorized to transact business or conduct affairs in this State, having an office identical with such registered office.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 8.07.]

Art. 1396-8.08. Change of Registered Office or Registered Agent of Foreign Corporation

A. A foreign corporation authorized to conduct affairs in this state may change its registered office or change its registered agent, or both, upon filing in the office of the Secretary of State a statement setting forth:

(1) The name of the corporation.

(2) The post-office address of its then registered office.

(3) If the post-office address of its registered office is to be changed, the post-office address to which the registered office is to be changed.

(4) The name of its then registered agent.

(5) If its registered agent is to be changed, the name of its successor registered agent.

(6) That the post-office address of its registered office and the post-office address of the business office of its registered agent, as changed, will be identical.

(7) That such change was authorized by its Board of Directors or by an officer of the corporation so authorized by the Board of Directors, or if the management of the corporation is vested in its members pursuant to Article 2.14C of this Act, by the members.

B. Such statement shall be executed by any authorized officer of the corporation, and verified by such officer. The verification shall include a statement that the officer executing the statement is duly authorized to do so on behalf of the corporation. The original and a copy of such statement shall be delivered to the Secretary of State. If the Secretary of State finds that such statement conforms to the provisions of this Act, he shall, when all fees have been paid as required by law:

(1) Endorse on the original and the copy the word "Filed," and the month, day and year of the filing thereof.

(2) File the original in his office.

(3) Return the copy to the corporation or its representative.

C. Upon the filing of such statement by the Secretary of State, the change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, shall become effective.

D. Any registered agent of a corporation may resign

(1) by giving written notice to the corporation at its last known address

(2) and by giving written notice, in triplicate (the original and two copies of the notice), to the Secretary of State within ten days after mailing or delivery of said notice to the corporation. Such notice shall include the last known address of the corporation and shall include the statement that written notice of resignation has been given to the corporation and the date thereof.

Upon compliance with the requirements as to written notice, the appointment of such agent shall terminate upon the expiration of thirty (30) days

after receipt of such notice by the Secretary of State.

If the Secretary of State finds that such written notice conforms to the provisions of this Act, he shall:

(1) Endorse on the original and both copies the word "filed" and the month, day and year of the filing thereof.

(2) File the original in his office.

(3) Return one copy to such resigning registered agent.

(4) Return one copy to the corporation at the last known address of the corporation as shown in such written notice.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 8.08. Amended by Acts 1969, 61st Leg., p. 2477, ch. 834, §§ 5, 6, eff. June 18, 1969; Acts 1979, 66th Leg., p. 218, ch. 120, § 13, eff. May 9, 1979.]

Art. 1396-8.09. Service of Process on Foreign Corporation

A. The president and all vice-presidents of a foreign corporation authorized to conduct affairs in this State and the registered agent so appointed by a foreign corporation shall be agents of such corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served. Where the chief executive function is performed by a committee, service may be had on any member thereof.

B. Whenever a foreign corporation authorized to conduct affairs in this State shall fail to appoint or maintain a registered agent in this State, or whenever any such registered agent cannot with reasonable diligence be found at the registered office, or whenever the certificate of authority of a foreign corporation shall be revoked, then the Secretary of State shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the Secretary of State of any such process, notice, or demand shall be made by delivering to and leaving with him, or with the Assistant Secretary of State, or with any clerk having charge of the corporation department of his office, duplicate copies of such process, notice, or demand. In the event any such process, notice or demand is served on the Secretary of State, he shall immediately cause one of such copies thereof to be forwarded by registered mail, addressed to the corporation at its principal office in the state or country under the laws of which it is incorporated. Any service so had on the Secretary of State shall be returnable in not less than thirty (30) days.

C. The Secretary of State shall keep a record of all processes, notices and demands served upon him under this Article, and shall record therein the time of such service and his action with reference thereto.

D. Provisions of Article 2031A of Revised Civil Statutes of Texas as amended shall not apply to any corporation to which this Act applies.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 8.09.]

Arts. 1396-8.10, 1396-8.11. Repealed by Acts 1981, 67th Leg., p. 848, ch. 297, § 35, eff. Aug. 31, 1981

Art. 1396-8.12. Amended Certificate of Authority

A. A foreign corporation authorized to conduct affairs in this State shall procure an amended certificate of authority in the event it changes its corporate name, or desires to pursue in this State other or additional purposes than those set forth in its prior application for a certificate of authority, by making application therefor to the Secretary of State.

B. Any other statement on the original application for a certificate of authority may be changed by filing an application for an amended certificate of authority setting forth the change.

C. An application for an amended certificate of authority submitted because of a name change must be accompanied by a certificate from the proper filing officer in the jurisdiction of incorporation evidencing the name change.

D. The requirements in respect to the form and contents of such application, the manner of its execution, the filing of the original and a copy of the application with the Secretary of State, the issuance of an amended certificate of authority and the effect thereof, shall be the same as in the case of an original application for a certificate of authority.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 8.12. Amended by Acts 1979, 66th Leg., p. 219, ch. 120, § 14, eff. May 9, 1979; Acts 1981, 67th Leg., p. 835, ch. 297, § 8, eff. Aug. 31, 1981.]

Art. 1396-8.13. Withdrawal or Termination of Foreign Corporation

A. A foreign corporation authorized to conduct affairs in this State may withdraw from this State upon procuring from the Secretary of State a certificate of withdrawal. In order to procure such certificate of withdrawal, such foreign corporation shall deliver to the Secretary of State an application for withdrawal, which shall set forth:

(1) The name of the corporation and the state or country under the laws of which it is incorporated.

(2) That the corporation is not conducting affairs in this State.

(3) That the corporation surrenders its authority to conduct affairs in this State.

(4) That the corporation revokes the authority of its registered agent in this State to accept service of process and consents that service of process in any action, suit or proceeding based upon any cause of

action arising in this State during the time the corporation was authorized to conduct affairs in this State may thereafter be made on such corporation by service thereof on the Secretary of State.

(5) A post office address to which the Secretary of State may mail a copy of any process against the corporation that may be served on him.

(6) A statement that all sums due, or accrued, to this State have been paid, or that adequate provision has been made for the payment thereof.

(7) A statement that all known creditors or claimants have been paid or provided for and that the corporation is not involved in or threatened with litigation in any court in this State, or that adequate provision has been made for the satisfaction of any judgment, order or decree which may be entered against it in any pending suits.

B. The application for withdrawal shall be made on forms promulgated by the Secretary of State and shall be executed by any authorized officer of the corporation and verified by such officer, or, if the corporation is in the hands of a receiver or trustee, it shall be executed and verified on behalf of the corporation by such receiver or trustee. The verification shall include a statement that the officer executing the application is duly authorized to do so on behalf of the corporation.

C. When the existence of a foreign corporation terminates because of dissolution, merger, or any other reason, a certificate from the proper officer in the jurisdiction of the corporation's incorporation evidencing the termination shall be filed with the Secretary of State.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 8.13. Amended by Acts 1981, 67th Leg., p. 836, ch. 297, § 9, eff. Aug. 31, 1981.]

Art. 1396-8.14. Filing of Application for Withdrawal

A. The original and a copy of such application for withdrawal shall be delivered to the Secretary of State. If the Secretary of State finds that such application conforms to the provisions of this Act, he shall, when all fees have been paid as in this Act prescribed:

(1) Endorse on the original and the copy the word "Filed", and the month, day and year of the filing thereof.

(2) File the original in his office.

(3) Issue a certificate of withdrawal to which he shall affix the copy.

B. The certificate of withdrawal, together with the copy of the application for withdrawal affixed thereto by the Secretary of State, shall be returned to the corporation or its representative. Upon the issuance of such certificate of withdrawal, the au-

thority of the corporation to conduct affairs in this State shall cease.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 8.14. Amended by Acts 1979, 66th Leg., p. 219, ch. 120, § 15, eff. May 9, 1979.]

Art. 1396-8.15. Revocation of Certificate of Authority

A. The certificate of authority of a foreign corporation to conduct affairs in this state may be revoked by a decree of the district court for the county in which the registered office of the corporation in this state is situated or of any district court in Travis County in an action filed by the Attorney General when it is established that:

(1) The corporation has failed to comply with a condition precedent to the issuance of its certificate of authority or a renewal or amendment thereof; or

(2) The certificate of authority to transact business in this state or any amendment thereof was procured through fraud; or

(3) The corporation has continued to conduct affairs beyond the scope of the purpose or purposes expressed in its certificate of authority to conduct affairs in this state; or

(4) A misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation as required by law.

B. The certificate of authority of a foreign corporation to conduct affairs in this state may be revoked by order of the Secretary of State when it is established that it is in default in any of the following particulars:

(1) The corporation has failed to file any report within the time required by law, or has failed to pay any fees, franchise taxes, or penalties prescribed by law when the same have become due and payable; or

(2) The corporation has failed to maintain a registered agent in this state as required by law; or

(3) The corporation has changed its corporate name and has failed to file with the Secretary of State within thirty days after such change of name became effective, an application for an amended certificate of authority, or that the corporation has changed its corporate name and that the newly adopted name is not available for use in this state; or

(4) The corporation has failed to pay the filing fee for the corporation's certificate of authority, or the fee was paid by an instrument that was dishonored when presented by the state for payment.

C. (1) No foreign corporation shall have its certificate of authority to conduct affairs in this state revoked under Subsections (1), (2), or (3) of Section

B hereof unless the Secretary of State, or other state agency to which such report, taxes, fees or penalties is required to be made, gives the corporation not less than 90 days notice of its neglect, delinquency, or omission by certified mail addressed to its registered office or to its principal place of business, or to the last known address of one of its officers or directors, or to any other known place of business of said corporation, and the corporation has failed prior to such revocation to correct the neglect, omission or delinquency.

(2) When the certificate of authority of a corporation to conduct affairs in this state is revoked under Subsection (4) of Section B of this article, the Secretary of State shall give the corporation notice of the revocation by regular mail addressed to its registered office, its principal place of business, the last known address of one of its officers or directors, or any other known place of business of the corporation.

D. Whenever a corporation has given cause for revocation of its certificate of authority and has failed to correct the neglect, omission or delinquency as provided in Sections B and C, the Secretary of State shall thereupon revoke the certificate of authority of the corporation by issuing a certificate of revocation which shall include the fact of such revocation and the date and cause thereof. The original of such certificate shall be placed in his office and a copy thereof mailed to the corporation at its registered office or to its principal place of business, or to the last known address of one of its officers or directors, or to any other known place of business of said corporation. Upon the issuance of such certificate of revocation, the authority to conduct affairs in this state shall cease.

E. Any corporation whose certificate of authority has been revoked by the Secretary of State under the provisions of Section B of this article may be reinstated by the Secretary of State at any time within a period of 12 months from the date of such dissolution, upon approval of an application for reinstatement signed by an officer or director of the corporation. Such application shall be filed by the Secretary of State whenever it is established to his satisfaction that in fact there was no cause for the revocation, or whenever the neglect, omission or delinquency resulting in revocation has been corrected and payment made of all fees, taxes, penalties and interest due thereon which accrued before the revocation plus an amount equal to the total taxes from the date of revocation to the date of reinstatement which would have been payable had the corporation's certificate not been revoked. A reinstatement filing fee of \$25.00 shall accompany the application for reinstatement.

Reinstatement shall not be authorized if the corporate name is the same as or deceptively similar to a corporate name already on file or reserved or

registered, unless the corporation being reinstated contemporaneously amends its certificate of authority to change its name.

When the application for reinstatement is approved and filed by the Secretary of State, the corporate authority to do business in Texas shall be deemed to have continued without interruption from the date of revocation, except that reinstatement shall have no effect upon any issue of personal liability of the directors, officers, or agents of the corporation during the period between revocation and reinstatement.

F. When a foreign corporation is convicted of a felony, or when a high managerial agent is convicted of a felony committed in the conduct of the affairs of the foreign corporation, the Attorney General may file an action to revoke the certificate of authority of the foreign corporation to conduct affairs in this state in a district court of the county in which the registered office of the foreign corporation in this state is situated or in a district court of Travis County. The court may revoke the foreign corporation's certificate of authority if it is established that:

(1) The foreign corporation, or a high managerial agent acting in behalf of the foreign corporation, has engaged in a persistent course of felonious conduct; and

(2) To prevent future felonious conduct of the same character, the public interest requires such revocation.

G. Article 7.02 of this Act does not apply to Section F of this article.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 8.15. Amended by Acts 1965, 59th Leg., p. 533, ch. 276, §§ 4, 5, eff. Aug. 30, 1965; Acts 1969, 61st Leg., p. 2477, ch. 834, § 7, eff. June 18, 1969; Acts 1973, 63rd Leg., p. 990, ch. 399, § 2(N), eff. Jan. 1, 1974; Acts 1981, 67th Leg., p. 837, ch. 297, § 10, eff. Aug. 31, 1981.]

Art. 1396-8.16. Filing of Decree of Revocation

A. In case the court shall enter a decree revoking the certificate of authority of a foreign corporation to conduct affairs in this State, it shall be the duty of the clerk of such court to cause a certified copy of the decree to be filed with the Secretary of State. No fee shall be charged by the Secretary of State for the filing thereof.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 8.16.]

Art. 1396-8.17. Conducting Affairs without Certificate of Authority

A. No foreign corporation which is conducting affairs in this State without a certificate of authority shall be permitted to maintain any action, suit or proceeding in any court of this State until such corporation shall have obtained a certificate of authority. Nor shall any action, suit or proceeding be

maintained in any court of this State by any successor or assignee of such corporation on any right, claim or demand arising out of the conduct of affairs by such corporation in this State, until a certificate of authority shall have been obtained by such corporation or by a corporation which has acquired all or substantially all of its assets. It is expressly provided, however, that the provisions of this Article shall not affect the rights of any assignee of the foreign corporation as the holder in due course of a negotiable promissory note, check or bill of exchange, or as the bonafide purchaser for value of a warehouse receipt, stock certificate, or other instrument made negotiable by law.

B. The failure of a foreign corporation to obtain a certificate of authority to conduct affairs in this State shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action, suit or proceeding in any court of this State.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 8.17.]

Art. 1396-9.01. Report of Domestic and Foreign Corporations

A. The Secretary of State is authorized to require each domestic corporation and each foreign corporation authorized to conduct affairs in this State to file, not more often than once every four (4) years for any corporation, a report setting forth:

(1) The name of the corporation and the state or country under the laws of which it is incorporated.

(2) The address of the registered office of the corporation in this State, and the name of its registered agent in this State at such address, and, in the case of a foreign corporation, the address of its principal office in the state or country under the laws of which it is incorporated.

(3) The names and respective addresses of the directors and officers of the corporation.

B. Such report shall be made on forms promulgated by the Secretary of State, and the information contained shall be given as of the date of the execution of the report. It shall be executed by any authorized officer of the corporation and verified by such officer; or, if the corporation is in the hands of a receiver or trustee, it shall be executed and verified on behalf of the corporation by such receiver or trustee. The verification shall include a statement that the officer executing the report is duly authorized to do so on behalf of the corporation.

C. Such report shall be delivered to the Secretary of State within thirty (30) days of the mailing of notice by the Secretary of State to the corporation that such report is due. Such notice may be either written or printed and shall be addressed to such corporation and mailed to the address named in its articles of incorporation as its principal place of business, or to its registered agent, or to the last

address of the corporation as it appears on record in the office of the Secretary of State, or to any other known place of business of such corporation.

D. Along with the notice that such report is due, the Secretary of State shall mail to the corporation two (2) copies of a report form which shall be prepared and filed as herein provided.

E. One (1) copy of such report shall be delivered to the Secretary of State. If the Secretary of State finds that such report conforms to the provisions of this Act, he shall:

(1) Endorse on such report the word "Filed," and the month, day, and year of the filing thereof.

(2) Notify the corporation of the filing of such report.

F. Within two (2) years after September 1, 1961, the Secretary of State shall mail such notice to each non-profit corporation organized under the laws of this State prior to the effective date of this Act and subject to the provisions of this Act, and such report shall thereafter be filed as provided herein.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 9.01.]

Art. 1396-9.02. Failure to File Reports; Forfeiture; Right of Corporation to Cure Default

A. Any domestic or foreign corporation which shall fail to file the report provided for in Article 9.01 of this Act,¹ when the same shall become due; shall, for such default, forfeit its right to conduct affairs in this State.

B. Such forfeiture shall be consummated without judicial ascertainment by the Secretary of State entering upon the margin of the record kept in his office relating to such corporation the words "right to conduct affairs forfeited," together with the date of such forfeiture. Notice of such forfeiture shall thereupon be mailed to the corporation to the address named in its articles of incorporation as its principal place of business, or to its registered agent, or to the last address of the corporation as it appears on record in the office of the Secretary of State, or to any other known place of business of such corporation. Until the right of such corporation to conduct affairs in this State shall be revived in accordance with Sections C and D of this Article, it shall not be permitted to maintain any action, suit or proceeding in any court of this State. Nor shall any action, suit or proceeding be maintained in any court of this State by any successor or assignee of such corporation on any right, claim, or demand arising out of the conduct of affairs by such corporation in this State, until the right of such corporation to conduct affairs in this State shall have been revived in accordance with Sections C and D of this Article. It is expressly provided, however, that the provisions of this Article shall not affect the rights of any assignee of the corporation as the holder in

due course of a negotiable promissory note, check, or bill of exchange, or as the bona fide purchaser for value of a warehouse receipt, stock certificate, or other instrument negotiable by law. The forfeiture of the right to conduct affairs in this State shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action, suit, or proceeding in any court of this State.

C. Any corporation whose right to conduct affairs may have been forfeited as provided in this Act, shall be relieved from such forfeiture by filing the required report with the Secretary of State within 120 days of the date of mailing such notice of forfeiture, together with a late filing fee of One Dollar (\$1) for each month, or fractional part thereof, which shall have elapsed after such forfeiture of its right to conduct affairs; provided, that such amount shall in no case be less than Five Dollars (\$5) nor more than Twenty-five Dollars (\$25).

D. When such report shall be filed and the revival fee shall be paid to the Secretary of State, he shall revive the right of the corporation to conduct affairs in this State, cancelling the words "right to conduct affairs forfeited" upon his record, and endorsing thereon the word "Revived" and the date of such revival.

E. If any corporation whose right to conduct affairs within this State shall hereafter be forfeited under the provisions of this Act shall fail to file such report and pay to the Secretary of State the required revival fee within one hundred and twenty (120) days after the date of mailing of the notice of such forfeiture, such failure shall constitute sufficient ground for the involuntary dissolution of the corporation or the revocation of its certificate of authority, which dissolution or revocation shall be consummated without judicial ascertainment, by the Secretary of State entering upon the record of such corporation filed in his office, the word "Forfeited" giving the date thereof and citing this Act as authority therefor.

F. Any corporation which is involuntarily dissolved or whose certificate of authority is revoked without judicial ascertainment, as provided in Section E hereof, and which has paid all fees, taxes, penalties and interest due thereon which accrued before the dissolution or revocation plus an amount equal to the total taxes from the date of dissolution or revocation to the date of reinstatement which would have been payable had the corporation not been dissolved or its certificate revoked may be relieved from such dissolution or revocation by filing the required report with the Secretary of State together with a filing fee of Twenty-five (\$25.00) Dollars.

G. When such report shall be filed and the revival fee shall be paid to the Secretary of State, he shall reinstate the certificate of incorporation or

charter or certificate of authority without judicial ascertainment, cancelling the word "Forfeited" upon his record, and endorsing thereon the words "Set Aside" and the date of such reinstatement; provided, if such dissolution or revocation is to be set aside, the corporation shall ascertain from the Secretary of State whether the name of the corporation is available, and if not available, amend its corporate name pursuant to the provisions of this Act.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 9.02; Acts 1965, 59th Leg., p. 533, ch. 276, §§ 6 to 9, eff. Aug. 30, 1965; Acts 1969, 61st Leg., p. 2477, ch. 834, § 8, eff. June 18, 1969.]

¹ Article 1396-9.01.

Art. 1396-9.03. Fees for Filing Documents and Issuing Certificates

A. The Secretary of State shall charge and collect for:

(1) Filing articles of incorporation and issuing a certificate of incorporation, Twenty-five Dollars (\$25); provided that the filing fee in the case of a church shall be Ten Dollars (\$10).

(2) Filing articles of amendment and issuing a certificate of amendment, Twenty-five Dollars (\$25); provided that the filing fee in the case of a church shall be Ten Dollars (\$10).

(3) Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, Fifty Dollars (\$50).

(4) Filing a statement of change of address of registered office or change of registered agent, or both, Five Dollars (\$5).

(5) Filing articles of dissolution, Five Dollars (\$5).

(6) Filing an application of a foreign corporation for a certificate of authority to conduct affairs in this state and issuing a certificate of authority, Twenty-five Dollars (\$25).

(7) Filing an application of a foreign corporation for an amended certificate of authority to conduct affairs in this state and issuing an amended certificate of authority, Twenty-five Dollars (\$25).

(8) Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, Five Dollars (\$5).

(9) Filing any other statement or report of a domestic or foreign corporation, Five Dollars (\$5).

(10) Filing restatement of articles of incorporation, Fifty Dollars (\$50); provided that the filing fee in the case of a church shall be Twenty Dollars (\$20).

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 9.03. Amended by Acts 1961, 57th Leg., p. 450, ch. 223, § 1; Acts 1981, 67th Leg., p. 837, ch. 297, § 11, eff. Aug. 31, 1981.]

Art. 1396-9.04. Powers of Secretary of State

A. The Secretary of State shall have the power and authority reasonably necessary to enable him to administer this Act efficiently and to perform the duties therein imposed upon him.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 9.04.]

Art. 1396-9.05. Appeals from Secretary of State

A. If the Secretary of State shall fail to approve any articles of incorporation, application for certificate of authority to conduct affairs in this State, amendment, merger, consolidation, or dissolution, or any other document required by this Act to be approved by the Secretary of State before the same shall be filed in his office, he shall, within ten (10) days after the delivery thereof to him, give written notice of his disapproval to the person or corporation, domestic or foreign, delivering the same, specifying in such notice the reasons therefor. From such disapproval such person or corporation may appeal to any district court of Travis County by filing with the clerk of such court a petition setting forth a copy of the articles or other document sought to be filed and a copy of the written disapproval thereof by the Secretary of State; whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the Secretary of State or direct him to take such action as the court may deem proper.

B. Appeals from all final orders and judgments entered by the district court under this Article in review of any ruling or decision of the Secretary of State may be taken as in other civil actions.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 9.05.]

Art. 1396-9.06. Certificates and Certified Copies to be Received in Evidence

A. All certificates issued by the Secretary of State in accordance with the provisions of this Act, and all copies of documents filed in his office, in accordance with the provisions of this Act when certified by him, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated and may be officially recorded. A certificate by the Secretary of State under the great seal of this State, as to the existence or non-existence of the facts relating to corporations which would not appear from a certified copy of any of the foregoing documents or certificates shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or non-existence of the facts therein stated.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 9.06.]

Art. 1396-9.07. Forms to be Promulgated by Secretary of State

A. Forms may be promulgated by the Secretary of State for all reports and all other documents required to be filed in the office of the Secretary of State. The use of such forms, however, shall not be mandatory, except in instances in which the law may specifically so provide.

[Acts 1959; 56th Leg., p. 286, ch. 162, art. 9.07.]

Art. 1396-9.08. Greater Voting Requirements

A. Whenever, with respect to any action to be taken by the members or directors of a corporation, the articles of incorporation require the vote or concurrence of a greater proportion of the members or directors, as the case may be, then required by this Act with respect to such action, the provisions of the articles of incorporation shall control.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 9.08.]

Art. 1396-9.09. Waiver of Notice

A. Whenever any notice is required to be given to any member or director of a corporation under the provisions of this Act or under the provisions of the articles of incorporation or by-laws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 9.09.]

Art. 1396-9.10. Action Without a Meeting by Members, Directors or Committees

A. Any action required by this Act to be taken at a meeting of the members or directors of a corporation, or any action which may be taken at a meeting of the members or directors or of any committee, may be taken without a meeting if a consent in writing, setting forth the action to be taken, shall be signed by all the members entitled to vote with respect to the subject matter thereof, or all of the directors, or all of the members of the committee, as the case may be.

B. Such consent shall have the same force and effect as a unanimous vote, and may be stated as such in any articles or document filed with the Secretary of State under this Act.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 9.10.]

Art. 1396-10.01. Application to Foreign and Interstate Affairs

A. The provisions of this Act shall apply to the conduct of affairs with foreign nations and among the several states only in so far as the same may be permitted under the provisions of the Constitution of the United States.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 10.01.]

Art. 1396-10.02. Reservation of Power

A. The Legislature shall at all times have power to prescribe such regulations, provisions, and limitations as it may deem advisable, which regulations, provisions, and limitations shall be binding upon any and all corporations subject to the provisions of this Act, and the Legislature shall have power to amend, repeal, or modify this Act.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 10.02.]

Art. 1396-10.03. Effect of Invalidity of Part of This Act

A. If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional any clause, sentence, subsection, section, or Article of this Act, such judgment or decree shall not affect, impair, invalidate, or nullify the remainder of this Act, but the effect thereof shall be confined to the clause, sentence, subsection, section, or Article of this Act so adjudged to be invalid or unconstitutional.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 10.03.]

Art. 1396-10.04. To What Corporations This Act Applies; Procedure for Adoption of Act by Existing Corporation

A. Until September 1, 1961, this Act shall not apply to any domestic corporation duly chartered and existing on the effective date of this Act, or to any foreign corporation, unless such domestic corporation shall voluntarily elect to adopt the provisions of this Act and shall comply with the procedure prescribed by Section B of this Article, and unless such foreign corporation shall procure a certificate of authority pursuant to Part Eight of this Act.¹

B. From and after the effective date of this Act and prior to September 1, 1961, any domestic corporation duly chartered and existing on the effective date of this Act may voluntarily elect to adopt the provisions of this Act and may become subject to its provisions by taking the following steps:

(1) A resolution reciting that the corporation voluntarily adopts this Act shall be adopted by the board of directors and/or the members in accordance with the procedure prescribed by this Act for the amendment of articles of incorporation of such corporation.

(2) Upon adoption of the required resolution or resolutions, an instrument shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which shall set forth:

- (a) The name of the corporation.
- (b) Each resolution adopted by the corporation.
- (c) The date of the adoption of each resolution.

(d) The street address of its initial registered office and the name of its initial registered agent at such address.

(3) Duplicate originals of such document shall be delivered to the Secretary of State. If the Secretary of State finds that such document conforms to law, he shall, when all fees and franchise taxes have been paid as prescribed by law:

(a) Endorse on each of such duplicate originals the word "Filed," and the month, day, and year of the filing thereof.

(b) File one of such duplicate originals in his office.

(c) Deliver the other duplicate original to the corporation or its representative.

(4) Upon the filing of such document, all provisions of this Act shall thereafter apply to the corporation; provided, however, that such delivery to and filing by the Secretary of State need not precede action by the directors and/or the members of a corporation in connection with amendments to its articles of incorporation or its by-laws under this Act so long as (a) such amendments do not become effective until after the Secretary of State has filed the document whereby such corporation adopts this Act and (b) the procedures and requirements of this Act for the adoption of such amendments, including requirements as to notice, shall have been complied with and satisfied.

C. Except for the exceptions and limitations of Section A of this Article, this Act shall apply to all domestic corporations organized after the date on which this Act becomes effective and to all domestic corporations electing to adopt this Act and manifesting their election in the manner provided in Section B of this Article, prior to September 1, 1961.

D. From and after September 1, 1961, this Act shall apply to all domestic corporations and to all foreign corporations conducting or seeking to conduct affairs within this State. Those domestic corporations existing at the time that this Act becomes effective which have not meanwhile adopted this Act by complying with Section B of this Article shall, on September 1, 1961, be deemed to have elected to adopt this Act by not voluntarily dissolving.

E. No foreign corporation shall conduct affairs in this State after September 1, 1961, unless and until it shall have procured a certificate of authority in accordance with the requirements of Part Eight of this Act. Such certificates may be applied for and issued at any time after the effective date of this Act and this Act shall thereafter apply to such corporation from the date of the issuance of its certificate of authority; provided, however, that if such corporation expressly so requests in its application, the effective date of its certificate may be

delayed until September 1, 1961, even though issued prior to such date.

F. In so far as the same are not inconsistent with or contrary to any applicable provision of the Insurance Code of Texas, or any amendment thereto, the provisions of this Act shall apply to and govern burial associations as defined in Article 14-37, Texas Insurance Code local mutual aid associations, statewide mutual assessment corporations, and county mutual insurance companies; provided however, (a) that any such mutual insurance associations or companies may, upon advance approval of the Commissioner of Insurance, pay dividends to its members, and (b) that wherever in this Act some duty, responsibility, power, authority, or act is vested in, required of, or to be performed by the Secretary of State, such is to be vested in, required of, or performed by the Commissioner of Insurance in so far as such mutual insurance companies or associations are concerned.

G. This Act shall not apply to those corporations excepted under Article 2.01 B, Subsections (3), (4), and (5) of this Act;² provided however, that if any of said excepted domestic corporations were heretofore or are hereafter organized not for profit under special statutes which contain no provisions in regard to some of the matters provided for in this Act, or if such special statutes specifically applicable provide that the general laws for incorporation shall supplement the provisions of such statutes, then the provisions of this Act shall apply to the extent that they are not inconsistent with the provisions of such special statutes.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 10.04. Amended by Acts 1961, 57th Leg., p. 653, ch. 302, § 2.]

¹ Article 1396-8.01 et seq.

² Article 1396-2.01 B, subsecs. (3), (4), (5).

Art. 1396-10.05. Extent to Which Existing Laws Shall Remain Applicable to Corporations

A. Except as provided in the last preceding Article,¹ existing corporations shall continue to be governed by the laws heretofore applicable thereto, until September 1, 1961.

B. Except as provided in Article 10.06 of this Act,² any limitations, obligations, liabilities and powers applicable to a particular kind of corporation, for which special provision is made by the laws of this State, shall continue to be applicable to any such corporation, and this Act is not intended to repeal and does not repeal the statutory provisions providing for these special limitations, obligations, liabilities and powers.

C. Provided that nothing in this Act shall in any wise affect or nullify the Anti-Trust laws of this State.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 10.05.]

¹ Article 1396-10.04.

² Article 1396-10.06.

Art. 1396-10.06. Repeal of Existing Laws; Extent and Effect Thereof

A. Subject to the provisions of the last two (2) preceding Articles of this Act¹ and of Section B of Article 2.01 of this Act,² and excluding any existing general Act not inconsistent with any provisions of this Act, no law of this State pertaining to private corporations, domestic or foreign, shall hereafter apply to corporations organized under this Act, or which obtain authority to conduct affairs in this State under this Act, or to existing corporations which adopt this Act.

B. The repeal of a prior Act by this Act shall not affect any right accrued or established, or any liability or penalty incurred, under the provisions of such Act prior to the repeal thereof.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 10.06.]

¹ Articles 1396-10.04, 1396-10.05.

² Article 1396-2.01.

Art. 1396-11.01. Emergency Clause

A. The fact that existing laws of the State of Texas have been amended from time to time over a period of some seventy (70) years and more without any adoption meanwhile of a complete Act relating to non-profit corporations generally, the provisions of which are consistent with one another; the fact that with so many amendments of the corporation laws applicable to non-profit corporations generally over so many years there have developed many uncertainties in the corporation laws of this State and with the result that there is now an imperative need for clarification of certain provisions of the existing laws; the fact that existing Texas laws are incomplete and that there are no existing Texas laws for many aspects of the non-profit corporation; all such facts create an emergency and public necessity that the Constitutional Rule requiring bills to be read on three separate days in each House be suspended and said Rule is hereby suspended; and require that this Act take effect and be in force from and after its passage, and it is so enacted.

[Acts 1959, 56th Leg., p. 286, ch. 162, art. 11.01.]

1A. COOPERATIVES

Art. 1396-50.01. Cooperative Association Act

Short Title

Sec. 1. This Act may be cited as the Cooperative Association Act.

Definitions

Sec. 2. In this Act:

(1) "Association" means a group enterprise legally incorporated under this Act.

(2) "Member" means a member of a nonshare or share association.

(3) "Net savings" means the total income of an association less the costs of operation.

(4) "Savings returns" means the amount returned to patrons in proportion to their patronage or otherwise.

(5) "Cooperative basis" means that the net savings after payment, if any, of investment dividends and after making provisions for separate funds required or specifically permitted by statute, articles, or by-laws is allocated or distributed to member patrons, or to all patrons, in proportion to their patronage or retained by the enterprise for the actual or potential expansion of its services, the reduction of its charges to the patrons, or for other purposes not inconsistent with its non-profit character.

(6) "Membership Capital" means those funds of the association derived from the members generally either as a requirement of membership or in lieu of patronage dividends. Deposits and loans from members shall not be construed as "membership capital."

(7) "Invested Capital" means those funds invested in the association by an investor with the expectation of receiving investment dividends.

(8) "Investment Dividends" means the return on invested capital or on membership capital derived from the net savings of the association.

(9) "Patronage Dividends" means a share of net savings distributed among members on a basis of extent of patronage, as provided for in the articles of incorporation.

Applicability of Texas Non-Profit Corporation Act

Sec. 3. An association incorporated under this Act is subject to the provisions of the Texas Non-Profit Corporation Act, as amended (Article 1396-1-01 et seq., Vernon's Texas Civil Statutes), to the extent that the provisions of the Texas Non-Profit Corporation Act do not conflict with the provisions of the Act. An association incorporated under this Act may exercise the same powers and privileges and is subject to the same duties, restrictions, and liabilities as nonprofit corporations except to the extent that these are limited or enlarged by this Act.

Who May Incorporate

Sec. 4. Five or more natural persons or two or more associations may incorporate under this Act; provided, however, an association may not be incorporated or organized to serve or function as a health maintenance organization or furnish medical, or health care nor may an association employ or contract with providers of medical care in any manner which is prohibited by any licensing law of this state under which such persons are licensed.

Purposes

Sec. 5. An association may be incorporated under this Act to engage in acquiring, producing, building, operating, manufacturing, furnishing, exchanging, or distributing any type of property, commodities, goods, or services for the primary and mutual benefit of the members of the association.

Powers

Sec. 6. An association may exercise all the powers granted to a nonprofit corporation under Article 2.02, Texas Non-Profit Corporation Act and may:

(1) own and hold membership in and share capital of other associations or corporations, and own and exercise ownership rights in bonds or other obligations;

(2) make agreements of mutual aid or federation with other associations, other groups organized on a cooperative basis, and other nonprofit groups;

(3) exercise all powers not inconsistent with this Act that are necessary or convenient for the accomplishment of its purposes, and to that end the enumeration of powers in this section is not exclusive; and

(4) not engage, either directly or indirectly, in insurance companies of every type or character as the insurance business is defined and regulated by the Insurance Code, as amended, health maintenance organizations, or prepaid legal service corporations.

Registered Office and Registered Agent

Sec. 7. An association shall maintain a registered office and registered agent in accordance with the provisions of Article 2.05, Texas Non-Profit Corporation Act. An association may change its registered office and registered agent in accordance with the provisions of Article 2.06, Texas Non-Profit Corporation Act. Process may be served on an association in accordance with the provisions of Article 2.07, Texas Non-Profit Corporation Act.

Articles of Incorporation; Contents

Sec. 8. (a) Articles of incorporation shall be signed and acknowledged by each of the incorporators if they are natural persons and by the presidents and secretaries if they are associations.

(b) Subject to the limitations of this Act, the articles must contain:

(1) a statement of the purpose or purposes for which the association is formed;

(2) the name of the association, which must include the word "cooperative" or an abbreviation or derivative of it;

(3) the term of existence of the association, which may be perpetual;

(4) the location and street address of the initial registered office of the association and the initial registered agent at that address;

(5) the names and street addresses of the incorporators of the association;

(6) the names and street addresses of the directors who shall manage the affairs of the association for the first year, unless sooner changed by the members;

(7) a statement of whether the association is organized with or without shares, and the number of shares or memberships subscribed for;

(8) if organized with shares, a statement of the amount of authorized capital, the number and types of shares and the par value, if any, of the shares, and the rights, preferences, and restrictions of each type of share;

(9) the method by which a surplus is distributed on dissolution of the association, in conformity with the requirements of Section 38 of this Act for division of surplus.

(c) The articles may contain other provisions for the conduct of the association's affairs not inconsistent with this Act or any other law.

Filing, Certificate of Incorporation, Organization Meeting

Sec. 9. (a) The articles shall be delivered to the secretary of state in accordance with the provisions of Article 3.03, Texas Non-Profit Corporation Act. If he finds that the articles conform to law, he shall file them on payment by the association of the fee required by Article 9.03, Texas Non-Profit Corporation Act.

(b) After filing and recording the articles, the secretary of state shall issue a certificate of incorporation, in accordance with Article 3.04, Texas Non-Profit Corporation Act, at which point the corporate existence begins.

(c) After the issuance of the certificate of incorporation, an organization meeting shall be held in accordance with Article 3.05, Texas Non-Profit Corporation Act.

Amendments

Sec. 10. (a) An amendment to the articles may be proposed by a two-thirds vote of the board of directors or by petition of the association's members as provided in the by-laws. The secretary shall send notice of a meeting to consider an amendment to each member at the member's last known address, or shall post a written notice of the meeting in a conspicuous place in all principal places of activity of the association. Either type of notice shall be accompanied by the full text of the proposal and by the text of the part of the articles to be amended, at least 30 days before the meeting.

(b) Two-thirds of the members voting may adopt an amendment. When adoption of an amendment is verified by the president and secretary, it shall be filed and recorded with the secretary of state within 30 days after its adoption in accordance with Article 4.04, Texas Non-Profit Corporation Act.

Adoption of By-Laws

Sec. 11. By-laws may be adopted, amended, or repealed by a simple majority vote of the members voting, unless the articles or by-laws require a greater majority.

Contents of By-Laws

Sec. 12. Subject to the limitations of this Act, the by-laws may provide for:

(1) the requirements for the admission to membership and disposal of members' interests on cessation of membership;

(2) the time, place and manner of calling and conducting meetings;

(3) the number or percentage of the members constituting a quorum;

(4) the number, qualifications, powers, duties, method of election, and terms of directors and officers, and the division or classification, if any, of directors to provide for rotating or overlapping terms;

(5) the compensation, if any, of the directors, and the number of directors necessary to constitute a quorum;

(6) the method of distributing the net savings;

(7) the bonding of every individual acting as officer or employee of an association handling funds or securities; and

(8) the various discretionary provisions of this Act as well as other provisions incident to the purposes and activities of the association.

Meetings

Sec. 13. (a) Regular meetings of members shall be held as prescribed in the by-laws, but shall be held at least once a year. Special meetings may be demanded by a majority vote of the directors or by written petition of at least one-tenth of the membership. When a meeting is demanded, it is the duty of the secretary to call the meeting for a date 30 days after the demand.

(b) Regular or special meetings, including meetings by units, may be held inside or outside this state as the articles may prescribe.

Notice of Meetings

Sec. 14. The secretary shall give notice of the time and place of meetings to members in the manner provided for in the by-laws. In the case of

a special meeting the notice shall specify the purpose for which the meeting is called.

Meetings by Units of the Membership

Sec. 15. The articles or by-laws may provide for the holding of meetings by units of the membership and may provide for a method of transmitting the votes cast at unit meetings to the central meeting, or for a method of representation of units by the election of delegates to the central meeting, or for a combination of both methods.

One Member—One Vote

Sec. 16. (a) Each member of an association has one vote, except that if an association includes among its members any number of other associations or groups organized on a cooperative basis, the voting rights of the member associations or groups may be as prescribed in the articles or by-laws.

(b) No voting agreement or other device to evade the one-member-one-vote rule is enforceable.

Proxy

Sec. 17. No member may vote by proxy.

Voting By Mail

Sec. 18. (a) The articles or by-laws may provide for either or both of the following procedures for voting by mail:

(1) the secretary may send to the members a copy of any proposal to be offered at a meeting with the notice of the meeting, and the mail votes cast by the members shall be counted together with those cast at the meeting if the mail votes are returned to the association within a specified number of days;

(2) the secretary may send to any member absent from a meeting an exact copy of the proposal acted on at the meeting, and the mail vote of the member on the proposal, if returned within a specified number of days, is counted together with the votes cast at the meeting.

(b) The articles or by-laws may also determine whether and to what extent mail votes are counted in computing a quorum.

Application of Voting Provisions in This Act to Voting by Mail

Sec. 19. If an association has provided for voting by mail, any provision of this Act referring to votes cast by the members applies to votes cast by mail.

Application of Voting Provisions in This Act to Voting by Delegates

Sec. 20. If an association has provided for voting by delegates, any provision of this Act referring to votes cast by the members applies to votes cast

by delegates, but this does not permit delegates to vote by mail.

Directors

Sec. 21. (a) An association shall be managed by a board of not less than five directors, who are elected for a term fixed in the by-laws not to exceed three years, by and from the members of the association, and who hold office until their successors are elected or until removed. Vacancies which occur in the board of directors, other than by removal or expiration of term, are filled in the manner the by-laws provide.

(b) The by-laws may provide for a method of apportioning the number of directors among the units into which the association may be divided, and for the election of directors by the respective units to which they are apportioned.

(c) An executive committee of the board of directors may be elected in the manner and with the powers and duties as prescribed by the articles or by-laws.

(d) Meetings of directors and of the executive committee may be held inside or outside this state.

Officers

Sec. 22. The officers of an association are a president, one or more vice-presidents, and a secretary and a treasurer or a secretary-treasurer. Any two or more offices may be held by the same person, except the offices of president and secretary. The officers of an association may be designated by such other titles as may be provided in the articles of incorporation or the by-laws. A committee duly designated may perform the functions of any office, and the functions of any two or more officers may be performed by a single committee, including the functions of both president and secretary. The officers are elected annually by the directors unless the by-laws provide otherwise.

Removal of Directors and Officers

Sec. 23. A director or officer may be removed with cause by a vote of a majority of the members voting at a regular or special meeting. The director or officer involved shall be given an opportunity to be heard at the meeting. A vacancy caused by removal is filled by the vote provided in the by-laws for election of directors.

Referendum

Sec. 24. The articles or by-laws may provide that within a specified period of time any action taken by the directors must be referred to the members for approval or disapproval if demanded by petition of at least 10 percent of all the members or by vote of at least a majority of the directors. Rights of third parties which have vested between

the time of the action and the referendum are not impaired by the results of the referendum.

Limitations on the Return on Capital

Sec. 25. (a) Investment dividends will not exceed eight percent on investment capital unless otherwise provided for in the by-laws and the investment dividend will not be cumulative unless otherwise provided for in the by-laws.

(b) Total investment dividends distributed for a fiscal year may not exceed 50 percent of the net savings for the period.

Eligibility and Admission to Membership

Sec. 26. A natural person, association, incorporated or unincorporated group organized on a cooperative basis, or a nonprofit group, may be admitted to membership in an association if it meets the qualifications for eligibility stated in the articles or by-laws.

Subscribers

Sec. 27. A natural person or group eligible for membership and legally obligated to purchase a share or shares of, or membership in, an association shall be deemed a subscriber. The articles or by-laws may determine whether and the conditions under which voting rights or other rights of membership are granted to subscribers.

Share and Membership Certificates: Issuance and Contents

Sec. 28. (a) No certificates for membership capital may be issued until its par value, if any, has been paid in full. Each certificate issued by an association shall bear a full or condensed statement of the requirements of Sections 16, 17, and 29(a) of this Act.

(b) No certificate for invested capital may be issued until its par value, if any, has been paid in full. Each certificate for invested capital issued by an association shall bear a full or condensed statement of restrictions on transferability if specifically provided for in the by-laws of the association.

Transfer of Shares and Membership: Withdrawal

Sec. 29. (a) If a member decides to withdraw from the association, the member shall offer his membership certificates to the directors in writing and the directors may purchase such holdings within a 90-day period following receipt of notice by paying the member the par value. The directors shall then reissue or cancel those shares. A vote of the majority of the members voting at a regular or special meeting may order the directors to exercise this power to purchase.

(b) If an investor owning investor certificates desires to sell, assign, or convey his certificates, he must do so in accordance with the by-laws of the

association; otherwise such investment certificates shall be repurchased by the association upon written notice to the directors within a 90-day period following receipt of notice by paying the investor the par value of the certificate, together with any investment dividend accrued.

Share and Membership Certificates: Recall

Sec. 30. (a) The by-laws may give the directors the power to use the reserve funds to recall, at par value, the membership certificates of any member in excess of the amount requisite for membership, and may also provide that if any member has failed to patronize the association during a time specified and in accordance with the by-laws, the directors may recall the member's membership certificates, thereby terminating his membership in the association. When membership certificates are recalled, they shall be either reissued or cancelled. No recall may be made if the solvency of the association would be jeopardized.

(b) The directors shall have the power to use the reserve funds to recall and repurchase at par value, together with any investment dividends due on the investment certificates of any investor. The by-laws may establish specific procedures, terms and conditions for such recall and repurchase.

Certificates: Attachment

Sec. 31. The holdings of any member of an association, to the extent of the minimum amount necessary for membership, but not to exceed \$50, are exempt from attachment, execution, or garnishment for the debts of the owner. If any holdings in excess of this amount are subjected to attachment, execution, or garnishment, the directors of the association may either admit the purchaser to membership, or may purchase the holdings at par value.

Liability of Members

Sec. 32. Members are not jointly or severally liable for debts of the association, nor is a subscriber liable, except to the extent of the unpaid amount on the membership certificates or on the invested capital certificates subscribed by him. No subscriber may be released from liability by assignment of his interest in the membership capital certificates or the invested capital certificates, but he is jointly and severally liable with the assignee until the membership certificates or investor certificates are fully paid up.

Expulsion

Sec. 33. A member may be expelled by the vote of a majority of the members voting at a regular or special meeting. The member against whom the charges are to be preferred shall be informed of the charges in writing at least 10 days in advance of the meeting, and shall be given an opportunity to be

heard in person or by counsel at the meeting. If the association votes to expel a member, the board of directors shall purchase the member's capital holdings at par value if and when such purchases may be made without jeopardizing the solvency of the association.

Allocation and Distribution of Net Savings

Sec. 34. (a) At least once each year the members or the directors, as the articles or by-laws may provide, shall apportion the net savings of the association in the following order:

(1) investment dividends, within the limitations of Section 25 may be paid on invested capital, or if the by-laws so provide, on the membership certificates, but the investment dividends may be paid only out of the surplus of the aggregate of the assets over the aggregate of the liabilities;

(2) a portion of the remainder, as determined by the articles or by-laws, may be allocated to an educational fund to be used in teaching cooperation, and a portion may also be allocated to funds for the general welfare of the members of the association;

(3) a portion of the remainder may be allocated to retained earnings;

(4) the remainder shall be allocated at the same uniform rate to all patrons of the association in proportion to their individual patronage as follows:

(A) in the case of a member patron, the proportionate amount of savings return distributed to the member may be in the form of cash, property, membership certificates, investment certificates or in any combination of these;

(B) in the case of a subscriber patron, his proportionate amount of savings returns as the articles or by-laws provide, may be distributed to him or credited to his account until the amount of capital subscribed for has been fully paid.

(b) This section does not prevent an association engaged in rendering services from disposing of the net savings from the rendering of services in a manner calculated to lower the fees charged for services or otherwise to further the common benefit of the members.

(c) This section does not prevent an association from adopting a system in which the payment of savings returns which would otherwise be distributed are deferred for a fixed period of time, nor from adopting a system in which the savings returns distributed are partly in cash, partly in shares, with the shares to be retired at a fixed future date, in the order of their serial number or date of issue.

Recordkeeping

Sec. 35. (a) To record its business operation, every association shall keep a set of books according to standard accounting practices.

(b) A written report shall be submitted to the annual meeting of the association which shall include the following:

(1) a balance sheet, and income and expense statement;

(2) the amount and nature of the association's authorized, subscribed, and paid-in capital, the number of its shareholders, and the number of shareholders who were admitted or withdrew during the year, the par value of its shares, and the rate at which any return on capital has been paid; and

(3) for nonshare associations, the total number of members, the number of members who were admitted or withdrew during the year, and the amount of membership fees received.

(c) The directors shall appoint a review committee, composed of members who are not principal bookkeepers, accountants, or employees of the association.

(d) The committee shall report on the quality of the annual report and the bookkeeping system at the annual meeting.

Annual Report

Sec. 36. (a) Every association having 100 or more members or an annual business amounting to \$20,000 or more shall prepare, within 120 days of the close of its operations each year, a report of its condition, sworn to by the president and secretary, which shall be filed in its registered office. The report shall state:

(1) the name and principal address of the association;

(2) the names, addresses, occupations, and date of expiration of the terms of the officers and directors, and their compensation, if any;

(3) the amount and nature of the association's authorized, subscribed, and paid-in capital, the number of its shareholders and the number of shareholders who were admitted or withdrew during the year, the par value of its shares, and the rate at which any investment dividends have been paid;

(4) for nonshare associations, the total number of members, the number of members who were admitted or withdrew during the year, and the amount of membership fees received; and

(5) the receipts, expenditures, assets, and liabilities of the association.

(b) Every association having 3,000 or more members or an annual business amounting to \$750,000 or more shall file a copy of the report with the secretary of state.

(c) A person who subscribes or verifies a report containing a materially false statement, known to the person to be false, commits a misdemeanor punishable by a fine of not less than \$25 nor more

than \$200, or by confinement in the county jail for not less than 30 days nor more than one year, or by both.

Notice of Delinquent Reports

Sec. 37. (a) If an association required by Section 36 of this Act to file a report with the secretary of state fails to do so in the prescribed time, the secretary of state shall notify the association of the delinquency by registered letter mailed to its principal office within 60 days after the report becomes delinquent. If an association required by Section 36 of this Act to file a report at its registered office but not required to file a copy with the secretary of state fails to do so in the prescribed time, the secretary of state or any member may notify the association of the delinquency by registered letter mailed to its principal office.

(b) If the association fails to file the report within 60 days from the date of notice under Subsection (a) of this section, a member of the association or the attorney general may seek a writ of mandamus against the association and the appropriate officer or officers to compel the filing to be made, and in the court shall require the association or the officers at fault to pay all the expenses of the proceeding including attorney fees.

Dissolution

Sec. 38. (a) An association may, at a regular or special meeting legally called, be directed to dissolve by a vote of two-thirds of the entire membership. If it is directed to dissolve, by a vote of a majority of the members voting, three of their number shall be designated as trustees, who shall liquidate, on behalf of the association and within a time fixed in their designation or within any extension of time, its assets, and shall distribute them in the manner set forth in this section.

(b) A suit for involuntary dissolution of an association organized under this Act may be instituted for the causes and prosecuted in the manner set forth in Articles 7.01 to 7.12, Texas Non-Profit Corporation Act (Articles 1396-7.01 through 1396-7.12, Vernon's Texas Civil Statutes), except that any distribution of assets shall be in the manner set forth in this section.

(c) When an association is dissolved, its assets shall be distributed in the following manner and order:

- (1) by paying its debts and expenses;
- (2) by returning to the investors the par value of their capital;
- (3) by returning to the subscribers to invested capital the amounts paid on their subscriptions;
- (4) by returning to patrons the amount of patronage dividends credited to their accounts;

(5) by returning to members their membership capital; and

(6) by distributing any surplus in either or both of the following ways, as the articles may provide: either among those patrons who have been members or subscribers at anytime during the six years preceding dissolution, on the basis of patronage during that period, or as a gift to any cooperative association or other non-profit enterprise which may be designated in the articles.

Use of Name "Cooperative"

Sec. 39. (a) Only an association organized under this Act, a group organized on a cooperative basis under any other law of this state, or a foreign corporation operating on a cooperative basis and authorized to do business in this state under this or any other law of this state may use the term "cooperative," or any abbreviation or derivation of the term "cooperative," as part of its business name, or represent itself, in advertising or otherwise, as conducting business on a cooperative basis.

(b) A person, firm, or corporation that violates Subsection (a) of this section commits a misdemeanor punishable by a fine of not less than \$25 nor more than \$200, with an additional fine of not more than \$200 for each month during which a violation occurs after the first month, or by confinement in the county jail for not less than 30 days nor more than one year, or by any combination of those punishments.

(c) The attorney general may sue to enjoin a violation of this section.

(d) If a court of competent jurisdiction renders judgment that a person, firm, or corporation which employed the name "cooperative" prior to this Act, is not organized on a cooperative basis, but may nonetheless continue to use the word "cooperative," the business shall always place immediately after its name the words "does not comply with the cooperative association law of Texas" in the same kind of type, and in letters not less than two-thirds as large, as those used in the word "cooperative."

Sec. 39A. [Expired]

Promotion Expenses

Sec. 40. (a) No association may use its funds, directly or indirectly, issue shares, or incur indebtedness for the payment of compensation for the organization of the association, except necessary legal fees, or for the payment of promotion expenses, in excess of five percent of the amount paid for the shares or membership certificates involved in the promotion transaction.

(b) An officer, director, or agent of an association who gives, or any person, firm, corporation or association who receives a promotion commission in violation of this section commits a misdemeanor and

may be punished by a fine of not less than \$25, nor more than \$200, or by confinement in the county jail for not less than 30 days nor more than one year, or by both.

False Reports

Sec. 41. A person, firm, corporation, or association that maliciously and knowingly spreads false reports about the management or finances of any association commits a misdemeanor punishable by a fine of not less than \$25 and not more than \$200, or by confinement in the county jail for not less than 30 days nor more than one year, or by both.

Existing Cooperative Groups

Sec. 42. Any group operating on a cooperative basis on the effective date of this Act may elect by a vote of two-thirds of the members voting to secure the benefits of and be bound by this Act. If it elects to secure the benefits of this Act, it shall amend its articles and by-laws to conform with this Act. A certified copy of the amended articles shall be filed and recorded with the secretary of state and a fee of \$5 shall be paid.

Foreign Corporations and Associations

Sec. 43. A foreign corporation or association operating on a cooperative basis and complying with the applicable laws of the state in which it is organized may transact business in this state as a foreign cooperative corporation or association.

Exemption From Taxes

Sec. 44. Each association organized under this Act is exempt from the franchise tax and from license fees imposed by the state or a political subdivision of the state. However, an association is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if the association is exempted by that chapter.

Exemption

Sec. 45. This Act does not apply to any corporation or association organized and now existing or in the future organized under the Cooperative Marketing Act, as amended (Articles 5737 through 5764, Revised Civil Statutes of Texas, 1925).¹

¹ Repealed; see, now, Agriculture Code, § 52.001 et seq.

Effect of Invalidity of Part of This Act

Sec. 46. If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional any clause, sentence, subsection or section of this Act, such judgment or decree shall not affect, impair, invalidate, or nullify the remainder of this Act, but the effect thereof shall be confined to the clause,

subsection or section of this Act so adjudged to be invalid or unconstitutional.

[Acts 1975, 64th Leg., p. 814, ch. 318, §§ 1 to 46, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 279, ch. 134, § 1, eff. May 11, 1977; Acts 1981, 67th Leg., p. 1777, ch. 389, § 27, eff. Jan. 1, 1982.]

Section 39A of this article expired of its own terms on September 1, 1978.

Section 1 of the 1981 amendatory act enacted Title 2 of the Tax Code.

2. RELIGIOUS AND CHARITABLE

Arts. 1396 to 1398. Repealed by Acts 1961, 57th Leg., p. 458, ch. 229, § 1

Art. 1399. Lodges

The grand lodge of Texas, Ancient, Free and Accepted Masons, the Grand Royal Arch Chapter of Texas, the Grand Commandery of Knights Templars of Texas (Masonic); the grand lodge of the Independent Order of Odd Fellows of Texas, and other like institutions and orders organized for charitable or benevolent purposes may, by the consent of their respective bodies expressed by a resolution or otherwise, become bodies corporate under this title.

[Acts 1925, S.B. 84.]

Art. 1400. Lodges: Charter

The incorporation of any such grand lodge shall include all of its subordinate lodges, or bodies holding warrant or charter under such grand body, and each of such subordinate bodies shall have all the rights of other corporations under and by the name given it in such warrant or charter issued by the grand body to which it is attached, such rights being provided for in the charter of the grand body. Such subordinate bodies shall, at all times, be subject to the jurisdiction and control of their respective grand bodies, and subject to have their warrants or charters revoked by such grand body.

[Acts 1925, S.B. 84.]

Art. 1401. Lodges: Trustees

Such grand bodies and their subordinates may elect their own trustees or directors, or name certain of their officers as such, and perform such other acts as are directed or provided by law in the case of other corporations, and shall have power to make constitutions and by-laws for the government of their affairs.

[Acts 1925, S.B. 84.]

Art. 1402. Lodges: Property

Such orders, grand and subordinate, shall have the right to acquire and hold such lands and personality as may be necessary or convenient for sites upon which to erect buildings for their use and occupancy, and for homes and schools for their widows, orphans or aged or decrepit or indigent members, and to sell or mortgage the same, such

conveyances to be executed by the presiding officer, attested by the secretary with the seal. The power and authority of such subordinate bodies to sell or to mortgage shall be subject to such conditions as may be from time to time prescribed or established by the grand body to which the subordinate is attached.

[Acts 1925, S.B. 84.]

Art. 1403. Lodges: Demise

Upon the demise of any subordinate body so incorporated, all property and rights existing in such subordinate body shall pass to, and vest in, the grand body to which it was attached, subject to the payment of all debts due by such subordinate body; but the grand body shall never be liable for any sum greater than the actual cash value of the effects of such subordinate actually received by it, or its authority.

[Acts 1925, S.B. 84.]

Art. 1404. Lodges: Loans

Any grand body incorporated under this subdivision shall have the right and authority to loan any funds held and owned by it for charitable purposes, for the endowment of any of its institutions, or otherwise, and may secure such loans by taking and receiving liens on real estate, or in such other manner as it may elect. Upon sale of any real estate under such lien, such grand body may become the purchaser thereof, and hold title thereto.

[Acts 1925, S.B. 84.]

Art. 1405. Lodges: Duration

Any grand body incorporating under this subdivision may provide in its charter for the expiration of its corporate powers at the end of any given number of years; or it may provide in its charter for its perpetual existence, and by its corporate name have perpetual succession of the officers and members.

[Acts 1925, S.B. 84.]

Art. 1406. Existing Lodge

Any such grand body or subordinate body now having a valid chartered existence may continue under its present charter, or reincorporate under this subdivision.

[Acts 1925, S.B. 84.]

Art. 1407. Lodges: Tax

Bodies incorporated under this subdivision shall not be subject to, or required to pay a franchise tax. However, an incorporated body is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if the body is exempted by that chapter.

[Acts 1925, S.B. 84. Amended by Acts 1981, 67th Leg., p. 1775, ch. 389, § 21, eff. Jan. 1, 1982.]

Section 1 of the 1981 amendatory act enacted Title 2 of the Tax Code.

Arts. 1408, 1409. Repealed by Acts 1961, 57th Leg., p. 458, ch. 229, § 1

3. EDUCATIONAL

Arts. 1410, 1411. Repealed by Acts 1961, 57th Leg., p. 408, ch. 205, § 2

Arts. 1412 to 1415. Repealed by Acts 1961, 57th Leg., p. 458, ch. 229, § 1

Art. 1415a. Repealed by Acts 1971, 62nd Leg., p. 2016, ch. 620, § 2, eff. Jan. 1, 1972

See, now, Education Code, § 32.01 et seq.

CHAPTER TEN. PUBLIC UTILITIES

1. TELEGRAPH

Art.

1416. Public Ways: Use.

1417. Right of Way.

1418. Competitor: Rights.

1419. Interstate Lines.

1420. Consolidations.

1421. Consolidation: Powers.

1422. Municipal Regulation.

2. TELEPHONE AND TELEGRAPH

1423 to 1425. Repealed.

1426. Transfer of Messages.

1427. Telephone Connections.

1428. Telegraph Connections.

1429. Transfers Excepted.

1430. Transfer Hearing.

1431. Penalty.

1432. Appeals.

1432a. Obstruction or Falsification of Emergency Telephone Calls; Penalty.

1432b. Alteration or Control of Telephone Lines in Hostage or Armed Robbery Emergency.

1432c. 9-1-1 Emergency Number Act.

3. WATER

1433. Privileges.

1433a. City or Town Laying Pipes, Etc., Outside Its Limits.

1434. Contracts.

1434a. Water Supply or Sewer Service Corporations.

4. GAS AND LIGHT

1435. Powers.

1435a. Cooperation by Entities in Electric Facilities Construction, Financing, Etc.

1435a-1. Validation of Creation and Organization Proceedings of Certain Municipal Power Agencies.

1435b. Joint Acquisition, Construction, and Operation of Electric Utility Facilities.

1436. Right of Way.

1436a. Construction of Lines on and across Roads and Streets.

1436b. Use of Roads and Streets in Distribution of Gas.

Art.

- 1436c. Safety of Persons Engaged in Activities in Proximity of High Voltage Electric Lines; Restrictions.
 1437. Finances.
 1438. Discrimination.
 1438a. Repealed.

5. SEWERAGE

1439. Eminent Domain.

6. DEPOSITS

1440. Deposit for Installing Service.
 1440a. Deposit for Installing Service.

7. REPORTS

- 1441 to 1446. Repealed.

8. MISCELLANEOUS PROVISIONS

- 1446a. Disruption of Gas, Electric or Water Service by Picketing, Threats or Intimidation.
 1446b. Fraudulently Obtaining Telecommunications Services.
 1446c. Public Utility Regulatory Act.
 1446c-1. Standards for Rating Solar Energy Devices.
 1446d. Electric Metering in Apartments and Condominiums.
 1446e. Gas Utility Regulatory Act.

9. TRADE ZONES

- 1446.1. Laredo Trade Zone Corporation.
 1446.2. McAllen Trade Zone Corporation.
 1446.3. Harlingen Trade Zone Corporation.
 1446.4. San Angelo Trade Zone Corporation.
 1446.5. Amarillo Trade Zone Corporation.
 1446.6. Galveston Port of Entry Trade Zone.
 1446.7. Houston Port of Entry Foreign Trade Zone.
 1446.8. Joint Airport Boards Foreign Trade Zone.
 1446.9. El Paso Trade Zone Corporation.
 1446.10. San Antonio Foreign Trade Zone.
 1446.11. Brownsville Navigation District Foreign Trade Zone.
 1446.12. Rio Grande City Foreign Trade Zone.
 1446.13. Del Rio Foreign Trade Zone.
 1446.14. Eagle Pass Foreign Trade Zone.
 1446.15. Foreign Trade Zones in Port Arthur Customs District and Orange and Jefferson Counties.
 1446.16. Midlothian Foreign Trade Zone.
 1446.17. Corpus Christi Foreign Trade Zone.

1. TELEGRAPH

Art. 1416. Public Ways: Use

Corporations created for the purpose of constructing and maintaining magnetic telegraph lines, are authorized to set their poles, piers, abutments, wires and other fixtures along, upon and across any of the public roads, streets and waters of this State, in such manner as not to incommode the public in the use of such roads, streets and waters.

[Acts 1925, S.B. 84.]

Art. 1417. Right of Way

They may also enter upon any lands owned by private persons or by a corporation, in fee or less

estate, for the purpose of making preliminary surveys and examinations with a view to the erection of any telegraph line, and from time to time appropriate so much of said lands as may be necessary to erect such poles, piers, abutments, wires and other necessary fixtures for a magnetic telegraph, and to make such changes of location of any part of said lines as may from time to time be deemed necessary, and shall have a right of access to construct said line, and when erected, from time to time as may be required, to repair the same, and shall have the right of eminent domain to obtain the right of way and condemn lands for the use of the corporation.

[Acts 1925, S.B. 84.]

Art. 1418. Competitor: Rights

No corporation shall have power to contract with any owner of land for the right to erect and maintain a telegraph line over his lands to the exclusion of the lines of other companies.

[Acts 1925, S.B. 84.]

Art. 1419. Interstate Lines

Any corporation created as herein provided may construct, own, use and maintain any line or lines of telegraph, whether wholly within, or wholly or partly beyond, the limits of this State.

[Acts 1925, S.B. 84.]

Art. 1420. Consolidations

They shall have power to lease or attach to their line or lines other telegraph lines, by lease or purchase, and may join with any other corporation or association in constructing, leasing, owning, using or maintaining their line or lines, upon such terms as may be agreed upon between the directors or managers of the respective corporations, and may own and hold any interest in such line or lines, or may become lessees thereof on such terms as the respective corporations may agree.

[Acts 1925, S.B. 84.]

Art. 1421. Consolidation: Powers

Any telegraph company organized under the laws of this State may, at any regular meeting of the stockholders thereof, by vote of persons holding a majority of shares of the stock of such company, unite or consolidate with any other company or companies organized under the laws of the United States or of any State or territory, by the consent of the company with which it may consolidate or unite; and such company so formed may hold, use and enjoy all the rights and privileges conferred by the laws of Texas on companies separately organized under the provisions of this title, and be subject to the same liabilities.

[Acts 1925, S.B. 84.]

Art. 1422. Municipal Regulation

The corporate authorities of any city, town or village through which the line of any telegraph corporation is to pass, may, by ordinance or otherwise, specify where the posts, piers or abutments shall be located, the kind of posts that shall be used, the height at which the wires shall be run; and such company shall be governed by the regulations thus prescribed. After the erection of said telegraph lines, the corporate authorities of any city, town or village shall have power to direct any alteration in the erection or location of said posts, piers or abutments, and also in the height at which the wires shall run, having first given such company or its agents opportunity to be heard in regard to such alteration.

[Acts 1925, S.B. 84.]

2. TELEPHONE AND TELEGRAPH

Arts. 1423 to 1425. Repealed by Acts 1975, 64th Leg., p. 2352, ch. 721, § 90, eff. Sept. 1, 1976

See, now, the Public Utility Regulatory Act, classified as art. 1446c.

Art. 1426. Transfer of Messages

All companies and corporations that own or operate telephone or telegraph lines for the purpose of transmitting messages from one point to another, are hereby required to arrange for conversations or transfer of messages as hereinafter provided.

[Acts 1925, S.B. 84.]

Art. 1427. Telephone Connections

All persons, companies, firms or corporations doing a telephone business in this State shall be compelled to make physical connections between their toll line at common points, for the transmission of messages or conversations from one line to another. Such connection shall be made through the switchboard of such persons, companies, firms or corporations, if any is maintained at such points, so that persons so desiring may converse from points on one of such lines to points on another.

[Acts 1925, S.B. 84.]

Art. 1428. Telegraph Connections

Each telegraph company or person, firm, corporation or association engaged in the business of accepting and transmitting messages to and from different points in this State, where the use of a telegraph instrument or instruments is necessary in the conduct of such business, shall, if there be any other persons, firm, corporation or association engaged in such business at the same point or in the same town, city or village, provide means whereby all messages conveyed to such points over the lines of any such companies shall be transferred to the

lines of either or all other such companies engaged in such business at such common points, and transmitted to their final destination; and such facilities shall be provided as will guarantee the transfer of such messages in compliance with the provisions of this subdivision.

[Acts 1925, S.B. 84.]

Art. 1429. Transfers Excepted

In no case shall any message be transferred from one line to another against the will of the company first handling the same, when it is possible for such company to deliver said message direct to the party for whom it is intended by way of the line or lines operated and owned by said company. No telegraph or telephone company shall, under the provisions of this subdivision be compelled to receive from the wires or lines of any other telegraph or telephone company and convey to its final destination any message originating at any point on its own lines.

[Acts 1925, S.B. 84.]

Art. 1430. Transfer Hearing

The city council in incorporated cities, and the commissioners court at points where there is no city council, shall on application of one hundred resident citizens, or upon its own motion, hear such evidence as they think necessary, and upon a final hearing they shall determine whether or not it would be necessary for public convenience, and just to the telephone or telegraph companies, to make such connection or arrange for the transfer of messages; whereupon they shall enter of record their findings, and shall also set out in their order the conditions upon which such arrangements for conversation or transfer of messages shall be made, and shall decide what proportion of expense shall be paid by each of said connecting lines.

[Acts 1925, S.B. 84.]

Art. 1431. Penalty

Whenever the city council or commissioners court shall enter an order in compliance with Arts. 1428 and 1429 requiring telephone or telegraph companies to arrange for conversation or transfer of messages, it shall be compulsory on said company to arrange for such conversation or transfer of messages, and failing to do so, they shall forfeit to the State of Texas on suit by the county or district attorney, the sum of ten dollars for each day they so neglect. The penalty herein assessed shall not be operative against a company which is prevented from making connections as herein required, through the fault or omission of another company, so long as such fault or omission shall cause such failure on its part to so connect.

[Acts 1925, S.B. 84.]

Art. 1432. Appeals

Any company ordered to arrange for conversations or to transfer messages between its line and another line as herein provided, shall have the right to appeal from such order to the court having jurisdiction over said matter, and the court shall, if it shall find that appellant had reasonable grounds for prosecuting such appeal, suspend the penalty herein provided for until such appeal is finally determined.

[Acts 1925, S.B. 84.]

Art. 1432a. Obstruction or Falsification of Emergency Telephone Calls; Penalty

Sec. 1. Any person who shall wilfully refuse to immediately relinquish a party line when such line is needed for an emergency call to a fire department, or police department, or for medical aid or ambulance service, after having been informed that the line is needed for such emergency call, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than Twenty-five Dollars (\$25) nor more than Five Hundred Dollars (\$500), or shall be confined in the county jail for not more than one month, or both such fine and confinement.

Sec. 2. Any person who shall secure the use of a party line by falsely stating that such line is needed for an emergency call to a fire department or police station or for medical aid or ambulance service shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than Twenty-five Dollars (\$25) nor more than Five Hundred Dollars (\$500), or shall be confined in the county jail for not more than one month, or both such fine and confinement.

Sec. 3. "Party line" as used in this Section means a subscriber's telephone circuit, consisting of two (2) or more main telephone stations connected therewith, each station with a distinctive ring or telephone number. "Emergency" as used in this Section, means a situation in which property or human life are in jeopardy and the prompt summoning of aid is essential.

Sec. 4. Every telephone directory hereafter distributed to the members of the general public in this state or in any portion thereof which lists the calling numbers of telephones of any telephone exchange located in this state shall contain a notice which explains the offense provided for in Sections 1 and 2 of this Act, such notice to be printed in type which is not smaller than the smallest type on the same page and to be preceded by the word "warning" printed in type at least as large as the largest type on the same page; provided, that the provisions of this Section shall not apply to those directories distributed solely for business advertising purposes, commonly known as classified directories, nor to any telephone directory heretofore printed or

distributed to the general public. Once each year there must be enclosed in each telephone bill mailed to persons using party line telephones a notice of substance of the provisions of Sections 1 and 2 of this Act. Any person, firm or corporation providing telephone service which distributes or causes to be distributed in this state copies of a telephone directory which is subject to the provisions of this Section and from which the notice herein provided is wilfully omitted or who wilfully fails to enclose the notice required to be enclosed in bills by this Section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than Twenty-five Dollars (\$25) nor more than Five Hundred Dollars (\$500).

[Acts 1961, 57th Leg., p. 578, ch. 272.]

Art. 1432b. Alteration or Control of Telephone Lines in Hostage or Armed Robbery Emergency

Sec. 1. The supervising law enforcement official having jurisdiction in the geographical area where hostages are held, or where an armed suspect is barricaded, who has probable cause to believe that the holder of one or more hostages is committing a crime, or that the armed suspect is committing a crime, shall have the authority to order a previously designated telephone company security employee to arrange to cut, reroute, divert, or otherwise control telephone lines in any emergency in which such hostages are being held, or where an armed suspect is barricaded, for the purpose of preventing telephone communication by the holder of such hostages, or armed barricaded suspect, with any person other than a peace officer or a person authorized by the peace officer.

The serving telephone company within the geographical area of a law enforcement unit shall designate a telephone company security official and an alternate to provide all required assistance to law enforcement officials to carry out the purpose of this section.

Sec. 2. Good faith reliance on an order by a supervising law enforcement official pursuant to this article shall constitute a complete defense to any civil or criminal action brought against a telephone company, its directors, officers, agents, or employees, as a result of compliance with such order.

[Acts 1981, 67th Leg., p. 3055, ch. 801, eff. June 17, 1981.]

Art. 1432c. 9-1-1 Emergency Number Act**Short Title**

Sec. 1. This Act may be cited as the 9-1-1 Emergency Number Act.

Purpose

Sec. 2. It is the purpose of this Act to establish the number 9-1-1 as the primary emergency telephone number for use by certain local governments in this state and to encourage units of local government and combinations of the units to develop and improve emergency communication procedures and facilities in a manner that makes possible the quick response to any person calling the telephone number 9-1-1 seeking police, fire, medical, rescue, and other emergency services. To this purpose the legislature finds and declares:

- (1) it is in the public interest to shorten the time required for a citizen to request and receive emergency aid;
- (2) there exist thousands of different emergency telephone numbers throughout the state, and telephone exchange boundaries and central office service areas do not necessarily correspond to public safety and political boundaries;
- (3) a dominant part of the state's population is located in rapidly expanding metropolitan areas that generally cross the boundary lines of local jurisdictions and often extend into two or more counties; and
- (4) provision of a single, primary three-digit emergency number through which emergency services can be quickly and efficiently obtained would provide a significant contribution to law enforcement and other public safety efforts by making it less difficult to notify quickly public safety personnel.

Definitions

Sec. 3. In this Act:

- (1) "9-1-1 service" means that the user of the public telephone system has the ability to reach a public safety answering point by dialing the digits 9-1-1.
- (2) "Public agency" means an incorporated municipality or a county, located within the state that provides or has authority to provide fire-fighting, law enforcement, ambulance, medical, or other emergency services.
- (3) "Participating jurisdictions" means those public agencies that vote to be a part of a communication district.
- (4) "Board of managers" or "board" means the governing authority of a communication district.
- (5) "District" means a communication district created under this Act.
- (6) "Principal city" means the city that has the largest population within a county, according to the most recent federal census.
- (7) "Public safety agency" means a functional division of a public agency that provides fire-fight-

ing, law enforcement, ambulance, medical, or other emergency services.

(8) "Private safety entity" means a private entity that provides emergency fire, ambulance, or medical services.

(9) "Public safety answering point" or "PSAP" means a communications facility operated on a 24-hour basis, seven days a week, assigned responsibility to receive 9-1-1 calls and, as appropriate, directly to dispatch emergency response services or to transfer or relay emergency 9-1-1 calls to other public safety agencies. It is the first point of reception by a public safety agency of a 9-1-1 call and serves the jurisdictions in which it is located or other participating jurisdictions.

(10) "Transfer method" means the method of responding to a telephone request for emergency service by which a PSAP transfers the call directly to the appropriate public safety agency or other provider of emergency services for appropriate action.

(11) "Relay method" means the method of responding to a telephone request for emergency service by which a PSAP notes pertinent information and relays this information to the appropriate public safety agency or other provider of emergency services for appropriate action.

(12) "Dispatch method" means the method of responding to a telephone request for emergency service by which a PSAP decides on the proper action to be taken and dispatches, when necessary, the appropriate emergency service unit.

(13) "Automatic number identification" or "ANI" means a feature by which a service supplier is enabled to identify the telephone number of a caller. The feature works by forwarding the caller's telephone number to the PSAP where the data is received by equipment that translates it into a visual display.

(14) "Automatic location identification" or "ALI" means a feature corresponding to ANI by which the number provided by the ANI feature is matched with the address or location of the telephone from which the call is made and is presented to the PSAP along with the number in a computerized 9-1-1 service system.

(15) "Selective routing" means the feature provided with computerized 9-1-1 service by which 9-1-1 calls are automatically routed to the answering point serving the place from which the call originates.

(16) "Data base" means the information stored in a management system which is a system of manual procedures and computer programs used to create, store, and update the data required for the selective routing and ALI features in the provision of computerized 9-1-1 service.

(17) "Service user" means any person or entity who is provided local exchange access lines/trunks in the district.

(18) "Service supplier" means any entity providing local exchange access lines/trunks to any service user throughout the district.

(19) "Principal service supplier" means that entity that provides the greatest number of central office lines to the district.

(20) "Local exchange access lines/trunks" means all types of lines or trunks which connect the service user to the service supplier's local telephone exchange office.

(21) "Base rate" means the rate or rates billed by a service supplier as stated in the service supplier's charges and approved by the appropriate regulatory authority which represent the service supplier's recurring charges for local exchange access lines/trunks or their equivalent, exclusive of all taxes, fees, license costs, or similar charges.

(22) "9-1-1 service system" as described in this Act means a computerized system of processing emergency 9-1-1 calls.

Application; Territory

Sec. 4. (a) This Act applies only to counties with a population of more than 2 million according to the most recent federal census and certain adjacent territory described by this section. The initial territory included in a district shall be all the area delineated as follows:

(1) all of the territory of the principal city, including portions that lie in adjacent counties;

(2) all nonprincipal cities and towns lying wholly or partly within a county covered by this Act; and

(3) all unincorporated areas of a county covered by this Act.

(b) If a city or town that is a part of a communication district lawfully annexes additional territory that is not a part of the district, the annexed territory becomes a part of the district.

Board of Managers

Sec. 5. (a) An area covered by this Act is authorized to create a communication district which is to be named by its governing authority. The district's governing authority is a board of managers composed of the following five voting and one nonvoting members:

(1) one voting member appointed by the commissioners court of the county;

(2) two voting members appointed by the mayor of the principal city with city council approval;

(3) one voting member appointed jointly by the volunteer fire departments operating wholly or part-

ly within the district with the selection process coordinated by the county fire marshal;

(4) one voting member appointed jointly:

(A) by nonprincipal cities, in the case of the initial member appointed under this subdivision; and

(B) by nonprincipal cities that are participating jurisdictions, in the case of each successor member appointed under this subdivision; and

(5) one nonvoting member appointed by the principal service supplier.

(b) Except for the initial members, board members are appointed for staggered terms of two years, with three members' terms expiring each year. After the appointment of the initial board, the members shall draw lots so that three initial members serve one-year terms and three serve two-year terms. A board member may be removed from office at will by the entity or officer appointing the member to the board. All vacancies on the board, whether by death, resignation, or removal, shall be filled for the remainder of the term in the manner provided for the original appointment.

(c) The duties of the board, whose members shall serve without compensation, shall be to manage, control, and administer the district. The board may adopt rules for the operation of the district. The board may contract with any public or private entity to effect the purposes of this Act, including the operation of a 9-1-1 system.

(d) The board may by its sole authority appoint a presiding officer and any other officers it considers necessary from among the membership of the board. The director of the district or any member of the board may be appointed as secretary of the board. The board shall require the secretary to keep suitable records of all proceedings of each meeting of the board. The record shall be read and signed after each meeting by the presiding officer or any other member presiding at the meeting and attested by the secretary.

(e) Unless a quorum is present, the board may not take any binding or final action on any item. A majority of the total voting membership of the board constitutes a quorum.

(f) The district shall pay all expenses necessarily incurred by the board in performing its functions under this Act.

(g) Voting members shall be entitled to meet in executive session in accordance with the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes).

Director of Communication District

Sec. 6. (a) The board shall appoint a general manager to be known as the director of the commu-

nication district and shall fix the compensation of the director. The director is subject to removal at any time by the board. The director may employ any experts, employees, and consultants, with approval by the board, as it may consider necessary to effect the purposes of this Act. The director shall perform all duties that may be required by the board and shall supervise all the operations of the district subject to any limitations as may be prescribed by the board. The director must be a person qualified by training and experience for the position.

(b) Once a year, as soon as practicable after the close of the fiscal year, the director shall prepare in writing and present to the board and to all participating public agencies a full, sworn statement of all money received by the district and how the money was disbursed or otherwise disposed of. The report shall show in detail the operations of the district for the term. Under the direction of the board, the director shall prepare an annual budget that must be approved by the board and then presented to the commissioners court of the county covered by this Act and to the city council of the principal city for final approval. In a like manner, all budget revisions must be approved by the board, the commissioners court, and the city council. Annually, the board shall perform an independent financial audit of the district.

Establishment of 9-1-1 Service

Sec. 7. (a) A communication district created under this Act shall provide 9-1-1 service to all participating jurisdictions under any one or a combination of the methods and features enumerated in Sections 3(10)-(15), or equivalent state-of-the-art technology, by one or both of the following plans:

(1) with the consent of a participating jurisdiction, the district may design, implement, and operate a 9-1-1 system for the jurisdiction; final plans for the system for a particular jurisdiction must have the approval of the jurisdiction; or

(2) with the consent of the affected participating jurisdictions, the district may design, implement, and operate a 9-1-1 system for two or more participating jurisdictions if a joint operation would be more economically feasible than separate systems for each jurisdiction; final plans for the system must have the approval of the participating jurisdictions.

(b) The district shall recommend minimum standards for a 9-1-1 system.

Primary Emergency Telephone Number

Sec. 8. The digits 9-1-1 shall be the primary emergency telephone number within the territory of a district established under this Act. A public safety agency whose services are available through a 9-1-1 system may maintain a separate number or

numbers for emergencies and shall maintain a separate number or numbers for nonemergency telephone calls.

Transmitting Requests for Emergency Aid

Sec. 9. (a) A 9-1-1 system established under this Act must be capable of transmitting requests for fire-fighting, law enforcement, ambulance, and medical services to a public safety agency or agencies that provide the requested service in the jurisdiction at the place where the call originates. A 9-1-1 system may also provide for transmittal of requests for other emergency services such as poison control, suicide prevention, and civil defense.

(b) A 9-1-1 PSAP may transmit emergency response requests to private safety entities.

(c) With the consent of a participating jurisdiction, privately owned automatic intrusion alarms and other privately owned automatic alerting devices may be installed so as to cause the number 9-1-1 to be dialed in order to gain access to emergency services.

Confirmation and Fee Election

Sec. 10. (a) When all five voting board members have been appointed or if following the 90th day after the effective date of this Act, at least three voting board members have been appointed, the district is tentatively established, subject to confirmation or dissolution as provided by this section. Not later than the 90th day after the district is tentatively established, the board shall institute proceedings for the creation of a district under this Act.

(b) The board, when so authorized by a majority of the votes cast in the election and by a majority vote of the governing body of each public agency to become a participating jurisdiction, may charge a 9-1-1 emergency service fee at a rate not to exceed two percent of the base rate of the principal service supplier per service user per month in the participating jurisdictions. For the purposes of this vote of the governing body of each public agency, the jurisdiction of the county includes all unincorporated areas of the county. The 9-1-1 emergency service fee must have uniform application and must be imposed within all participating jurisdictions.

(c) A governing body of a public agency voting at a later date to participate in the district must have the 9-1-1 emergency service fee charged beginning on the date the governing body passes the resolution or order formally making the public agency a participating jurisdiction of the district. At the time territory is added to a district under Section 4 of this Act, the 9-1-1 emergency service fee that the board has already been authorized to charge applies to the added territory.

(d) The board shall call an election within the territory defined in Section 4 of this Act for confirmation of the district and authority to charge and collect a 9-1-1 emergency service fee.

(e) The board shall order an election as prescribed in Subsection (a) of this section, and it shall order the ballot to be printed to provide for voting for or against the proposition: "Confirming the creation of the (name of the communication district) and authorizing a 9-1-1 emergency service fee to be charged." Each qualified voter in the proposed district is entitled to vote in the election.

(f) The board shall give notice of the election by posting the notice of the election in each election precinct in the district not later than the 20th day before the day of the election and by publishing the notice at least one time, not before the 25th day nor after the 10th day before the day of the election, in at least one daily newspaper of general circulation published in the district. The board shall include in the notice the nature and date of the election, the hours during which the polls will be open, the location of the polling places, and a description of the nature and maximum rate of the proposed 9-1-1 emergency service fee and the nature and proposed territory of the district. Except as provided by this section, the election shall be held to the extent practicable in accordance with the general election laws. A copy of the notice of the election shall be given to the county clerk of the county covered by this Act.

(g) Immediately after the election, the presiding judge of each election precinct shall return the results to the county clerk of the county covered by this Act, who shall canvass the returns and forward the results to the board. If a majority of the votes cast favors confirmation of the creation of the district and the levy of a 9-1-1 emergency service fee, the district continues to exist. If the votes cast are such that the district continues to exist, the board shall enter the results on its minutes and adopt an order declaring that the creation of the district is confirmed. A certified copy of the order shall be filed with the county clerk and shall be filed in the deed records of each county in which the district is located. The order shall include the date of the election, the proposition voted on, the number of votes cast for and against the proposition, and the number of votes by which the proposition was approved. The order shall be accompanied by a map of the district clearly showing the boundaries of the district.

(h) If the majority of votes cast at the election is against the confirmation of the creation of the district and the levy of the fee, the district shall cease to exist. The board shall enter an order so declaring and file a certified copy of the order with the county clerk of the county covered by this Act, and the tentatively established district is dissolved. If a

tentatively established district is dissolved, the procedure to establish a new district that will include any part of the dissolved district may be initiated only after the expiration of one year from the date of the election that resulted in the dissolution of the previous district. The procedure for establishing the new district is the same procedure prescribed by this Act for originally establishing a district and is initiated by the appointment under Section 5 of this Act of a board of managers for the new district.

(i) The cost of the election shall be divided equally between the county and the principal city.

District Powers

Sec. 11. (a) The district, when created and confirmed, constitutes a public body corporate and politic, exercising public and essential governmental functions, having all the powers necessary or convenient to effect the purposes and provisions of this Act, including the capacity to sue or be sued. The district shall function in accordance with this Act, and the board may levy and collect the proposed 9-1-1 emergency service fee. The order establishing the creation of the district shall specify the date of the commencement of the levy and collection of the 9-1-1 emergency service fee.

(b) In order to fund the district, it may receive federal, state, county, or municipal funds as well as private funds and may expend the funds for the purpose of this Act. The board shall determine the method and sources of funding for the district.

Levels of Revenues and Expenses

Sec. 12. The board in charging the 9-1-1 emergency service fee under this Act shall undertake to achieve a matching of the revenues to the operating expenses of the district and to provide reasonable reserves for contingencies and for purchase and installation of 9-1-1 emergency service equipment. Allowable operating expenses include all costs attributable to designing a 9-1-1 system and all equipment and personnel necessary for the establishment and operation of a PSAP and other related answering points as the board deems necessary. If the proceeds generated by a 9-1-1 emergency service fee exceed the amount of money necessary to fund the district, the board shall by resolution reduce the rate to an amount adequate to fund the district as provided by this section. In lieu of reducing the rate, the board may suspend the fee if the revenues generated from it exceed the district's needs. The board may by resolution reestablish the 9-1-1 emergency service fee or lift the suspension of it if the amount of money generated is not adequate to fund the district.

Imposition and Collection of Fee

Sec. 13. (a) A 9-1-1 emergency service fee may be imposed only upon the base rate charges or their

equivalent, exclusive of coin-operated telephone equipment. The fee may not be imposed upon more than 100 local exchange access lines/trunks or their equivalent per entity per location. Every billed service user is liable for any fee imposed under this subsection until it has been paid to the service supplier. The duty of the service supplier to collect the fee begins on the date of its implementation which shall be specified in the resolution calling the election. The 9-1-1 emergency service fee shall be added to and shall be stated separately in the billing by the service supplier to the service user.

(b) The service supplier is not obligated to take any legal action to enforce the collection of any 9-1-1 emergency service fee. However, the service supplier shall provide the board with a certificate of delinquency. Such certificate shall be provided annually, and it shall include the amount of all delinquent 9-1-1 fees and the name and address of the nonpaying user. A service user account shall be found delinquent if the 9-1-1 emergency service fees have not been paid to the service supplier within 30 days from the payment due date stated on the user's bill from the service supplier. The fee shall be collected at the same time as the service charge in accordance with the regular billing practice of the service supplier. The district may commence legal proceedings to collect fees not paid, and the district may establish internal collection procedures and recover the cost of collection from the nonpaying user. In the event legal proceedings are commenced, the district shall be entitled to collect court costs, attorney fees, and interest from the nonpaying user. Interest on the delinquent amount shall accrue at a rate of 12 percent from the payment due date. The certificate of delinquency shall constitute prima facie evidence of delinquency.

(c) The amount of the fee shall be set each year as part of the annual budget, and the service supplier shall be given at least 90 days' notice of a change in the fee. The amounts collected by the service supplier attributable to any 9-1-1 emergency service fee shall be due quarterly. The amount of the fee collected in any one calendar quarter by the service supplier shall be remitted to the district no later than the 60th day after the last day of the calendar quarter. On or before that 60th day, a return, in a form the district prescribes, shall be filed with the district together with a remittance of the amount of fees collected payable to the district. The service supplier shall maintain records of the amount of fees collected for a period of at least two years from the date of collection. The board may require at its expense an annual audit of the service supplier's books and records with respect to the collection and remittance of the fee. From the collected 9-1-1 fees to be remitted to the board, the service supplier shall be entitled to retain as an administrative fee an amount equal to two percent of the collected 9-1-1 fees.

(d) After the election confirming the creation of a district created under this Act, the board shall select a depository for the district in the manner provided by law for the selection of county depositories. The depository shall be the depository of the district for a period of two years after its selection and until its successor is selected and qualified.

Number and Location Identification; Liability

Sec. 14. (a) Current telephone numbers of subscribers and the addresses associated with the numbers shall be furnished by a service supplier as a part of computerized 9-1-1 service on a call-by-call basis and shall be deemed confidential and may not be available for public inspection.

(b) A service supplier is not liable to any person who uses the 9-1-1 system created under this Act for release to the district of the information specified in Subsection (a) of this section.

Public Review

Sec. 15. (a) Every three years, the board shall solicit public input and hold a public hearing on the continuation of the district and the 9-1-1 emergency service fee. The first public hearing shall be held three years after the date the order certifying the creation of the district is filed with the county clerk. Thereafter, the public hearings shall be held three years after the date the order of the previous public hearing has been adopted, if the order was for continuation.

(b) Notice of the time and place of the public hearing shall be published once a week for two consecutive weeks in a daily newspaper of general circulation published in the district, the first publication to be not less than 15 days before the date fixed for the hearing.

(c) After the public hearing, the board shall adopt an order on the continuation or the dissolution of the district and the fee.

(d) If a district is dissolved under this Act, the 9-1-1 service shall be discontinued on the date of the dissolution. The commissioners court of the county in which the principal part of the district was located shall assume the assets of the district and pay the debts of the district. If the assets of the district are insufficient to retire the outstanding bonded indebtedness of the district, the commissioners court shall continue to levy the 9-1-1 emergency service fee, the proceeds from which may be used only to retire the outstanding bonded indebtedness of the district. The commissioners court shall retire the indebtedness of the district to the extent practicable in accordance with the terms of the bonds and the terms of the orders and resolutions authorizing their issuance. The service supplier shall continue to collect the 9-1-1 emergency service fee and shall pay the fee to the commissioners court. The com-

missioners court by order may adopt regulations necessary to administer this subsection.

Issuance of Bonds

Sec. 16. The board may issue and sell bonds in the name of the district to finance:

(1) the acquisition by any method of facilities, equipment, or supplies necessary for the district to begin providing 9-1-1 service to all participating jurisdictions; or

(2) the installation of equipment necessary for the district to begin providing 9-1-1 service to all participating jurisdictions.

Manner of Repayment of Bonds

Sec. 17. The board may provide for the payment of principal of and interest on the bonds by pledging all or any part of the district's revenues from the 9-1-1 emergency service fee or from other sources.

Additional Security for Bonds

Sec. 18. (a) The bonds may be additionally secured by a deed of trust or mortgage lien on part or all of the physical properties of the district and rights appurtenant to such properties, vesting in the trustee power to sell the properties for payment of the indebtedness, power to operate the properties, and all other powers necessary for the further security of the bonds.

(b) The trust indenture, regardless of the existence of the deed of trust or mortgage lien on the properties, may contain provisions prescribed by the board for the security of the bonds and the preservation of the trust estate, may make provisions for amendment or modification and may make provisions for investment of funds of the district.

(c) A purchaser under a sale under the deed of trust or mortgage lien shall be absolute owner of the properties and rights purchased and may maintain and operate them.

Form of Bonds

Sec. 19. (a) A district may issue its bonds in various series or issues.

(b) Bonds may mature serially or otherwise not more than 25 years from their date and shall bear interest at any rate permitted by the constitution and laws of the state.

(c) A district's bonds and interest coupons, if any, are investment securities under the terms of Chapter 8 of the Business & Commerce Code and may be issued registrable as to principal or as to both principal and interest and may be made redeemable before maturity, at the option of the district, or may contain a mandatory redemption provision.

(d) A district's bonds may be issued in the form, denominations, and manner and under the terms,

conditions, and details and shall be signed and executed as provided by the board in the resolution or order authorizing their issuance.

Provisions of Bonds

Sec. 20. (a) In the orders or resolutions authorizing the issuance of bonds, including refunding bonds, the board may provide for the flow of funds, the establishment and maintenance of the interest and sinking fund, the reserve fund, and other funds and may make additional covenants with respect to the bonds, the pledged revenues, and the operation and maintenance of any facilities, the revenue of which is pledged.

(b) The orders or resolutions of the board authorizing the issuance of bonds may also prohibit the further issuance of bonds or other obligations payable from the pledged revenue or may reserve the right to issue additional bonds to be secured by a pledge of and payable from the revenue on a parity with or subordinate to the lien and pledge in support of the bonds being issued.

(c) The orders or resolutions of the board issuing bonds may contain other provisions and covenants as the board may determine.

(d) The board may adopt and have executed any other proceedings or instruments necessary and convenient in the issuance of bonds.

Approval by Attorney General; Registration by Comptroller

Sec. 21. (a) Bonds issued by a district must be submitted to the Attorney General of the State of Texas for examination.

(b) If the attorney general finds that the bonds have been authorized in accordance with law, he shall approve them, and they shall be registered by the Comptroller of Public Accounts of the State of Texas.

(c) After the approval and registration of bonds, the bonds are incontestable in any court or other forum for any reason and are valid and binding obligations in accordance with their terms for all purposes.

Refunding Bonds

Sec. 22. (a) A district may issue bonds to refund all or any part of its outstanding bonds, including matured but unpaid interest coupons.

(b) Refunding bonds shall mature serially or otherwise not more than 25 years from their date and shall bear interest at any rate or rates permitted by the constitution and laws of the state.

(c) Refunding bonds may be payable from the same source as the bonds being refunded or from other additional sources.

(d) The refunding bonds must be approved by the attorney general as in the case of other bonds and shall be registered by the comptroller on the surrender and cancellation of the bonds being refunded.

(e) The orders or resolutions authorizing the issuance of the refunding bonds may provide that they be sold and the proceeds deposited in the place or places at which the bonds being refunded are payable, in which case the refunding bonds may be issued before the cancellation of the bonds being refunded. If refunding bonds are issued before cancellation of the other bonds, an amount sufficient to pay the principal of and interest on the bonds being refunded to their maturity dates, or to their option dates if the bonds have been duly called for payment prior to maturity according to their terms, shall be deposited in the place or places at which the bonds being refunded are payable. The comptroller shall register the refunding bonds without the surrender and cancellation of bonds being refunded.

(f) A refunding may be accomplished in one or in several installment deliveries. Refunding bonds and their interest coupons are investment securities under Chapter 8 of the Business & Commerce Code.

(g) In lieu of the method set forth in Subsections (a) through (f) of this section, a district may refund bonds, notes, or other obligations as provided by the general laws of the state.

Bonds as Investments

Sec. 23. District bonds are legal and authorized investments for:

- (1) banks;
- (2) savings banks;
- (3) trust companies;
- (4) savings and loan associations;
- (5) insurance companies;
- (6) fiduciaries;
- (7) trustees;
- (8) guardians; and
- (9) sinking funds of cities, counties, school districts, and other political subdivisions of the state and other public funds of the state and its agencies, including the permanent school fund.

Bonds as Security for Deposits

Sec. 24. District bonds are eligible to secure deposits of public funds of the state and cities, counties, school districts, and other political subdivisions of the state. The bonds are lawful and sufficient security for deposits to the extent of their value when accompanied by all unmatured coupons.

Tax Status of Bonds

Sec. 25. Since a district created under this Act is a public entity performing an essential public function, bonds issued by the district, any transaction relating to the bonds, and profits made in the sale of the bonds are free from taxation by the state or by any city, county, special district, or other political subdivision of the state.

[Acts 1983, 68th Leg., p. 465, ch. 97, §§ 1 to 25, eff. July 1, 1983.]

3. WATER

Art. 1433. Privileges

Any water corporation shall have the power to sell and furnish such quantities of water as may be required by the city, town or village where located for public or private buildings or for other purposes; and such corporation shall have the power to lay pipes, mains and conductors for conducting water through the streets, alleys, lanes and squares of any such city, town or village, with the consent of the governing body thereof, and under such regulations as it may prescribe. Such corporation is further authorized to lay its pipes, mains and conductors and other fixtures for conducting water through, under, along, across and over all public roads, streets and waters lying and situated outside the territorial limits of any such city, town, or village in such manner as not to incommode the public in the use of such roads, streets and waters. Any such corporation shall notify the State Highway Commission, or the Commissioners Court having jurisdiction, as the case may be, when it proposes to build lines along the right of way of any State Highway, or county road, outside the limits of an incorporated city or town, whereupon the Highway Commission, or the Commissioners Court may, if it so desires, designate the place along the right of way where such lines shall be constructed. The public agency having jurisdiction or control of a highway or county road, that is, the Highway Commission or the Commissioners Court, as the case may be, may require any such corporation, at its own expense, to relocate its lines on a State Highway or county road outside the limits of an incorporated city or town, so as to permit the widening or changing of traffic lanes, by giving thirty (30) days written notice to such corporation and specifying the line or lines to be moved, and indicating the place on the new right of way where such line or lines may be placed. When deemed necessary to preserve the public health, any company or corporation chartered under the laws of this State for the purpose of constructing waterworks or furnishing water supply to any city or town, shall have the right of eminent domain to condemn private proper-

ty necessary for the construction of supply reservoirs or standpipes for water work.

[Acts 1925, S.B. 84; Acts 1949, 51st Leg., p. 1370, ch. 622, § 1.]

**Art. 1433a. City or Town Laying Pipes, Etc.,
Outside Its Limits**

Any incorporated city or town, in addition to powers otherwise existing, is authorized to lay its pipes, mains and conductors and other fixtures for conducting water through, under, along, across and over all public roads and waters lying and situated outside the territorial limits of such city or town in such manner as not to incommode the public in the use of such roads. Any such city or town shall notify the State Highway Commission, or the Commissioners Court having jurisdiction, as the case may be, when it proposes to build lines along the right of way of any State Highway, or county road, outside the limits of an incorporated city or town, whereupon the Highway Commission, or the Commissioners Court may, if it so desires, designate the place along the right of way where such lines shall be constructed. The public agency having jurisdiction or control of a highway or county road, that is, the Highway Commission or the Commissioners Court, as the case may be, may require any such city or town, at its own expense, to relocate its lines on a State Highway or county road outside the limits of an incorporated city or town, so as to permit the widening or changing of traffic lanes, by giving thirty (30) days written notice to such city or town and specifying the line or lines to be moved, and indicating the place on the new right of way where such line or lines may be placed.

[Acts 1949, 51st Leg., p. 1370, ch. 622, § 1.]

Art. 1434. Contracts

The governing body of any city, town or village in which any water corporation shall exist, is hereby authorized to contract with any such corporation for supplying with water the streets, alleys, lots, squares and public places in any such city, town or village.

[Acts 1925, S.B. 84.]

Art. 1434a. Water Supply or Sewer Service Corporations

Formation of Corporation

Sec. 1. On and after the passage of this Act, three or more persons who are citizens of the State of Texas, may form a corporation for the purpose of furnishing a water supply or sewer service, or both, to towns, cities, private corporations, individuals, and military camps and bases, and may provide in the charter of such corporation that no dividends shall ever be paid upon the stock and that all profits arising from the operation of such business shall be

annually paid out to cities, towns, corporations, and other persons who have during the past year transacted business with such corporation, in direct proportion to the amount of business so transacted, provided that no such dividends shall ever be paid while any indebtedness of the corporation remains unpaid and, provided also, that the Directors of such corporation may allocate to a sinking fund such amount of the annual profits as they deem necessary for maintenance, upkeep, operation, and replacements.

**Withdrawal of Water from Guadalupe or Comal
Rivers, or Tributaries or Springs**

Sec. 1-a. It shall be unlawful for any person, firm, association, or corporation to withdraw any water from the Guadalupe River or Comal River or any tributaries of such rivers or springs emptying into such rivers, or either of them, for the purpose of transporting such water to any point or points located outside of the natural watersheds of such rivers.

Any such withdrawal or attempted withdrawal of water from said rivers, springs, and/or tributaries may be enjoined in a suit for injunction brought by any person, municipality, or corporation owning riparian rights in or along said rivers. The venue of such suits shall be in the District Court of the county where such withdrawal or attempted withdrawal occurred.

Contracts with Federal Agencies

Sec. 2. The said corporation is hereby vested with power to negotiate and contract with any and all Federal Government agencies including, without exclusion because of enumeration, the Emergency Conservation Acts, Public Works Acts, Self-Liquidating Acts, Housing Unit Acts, Colonization Acts, Conservation Acts, Emergency Relief and Reconstruction Acts, and the Reconstruction Finance Corporation Act of January 22, 1932, Acts of the Seventy-second Congress of the United States of America, First Session, and with others, for the acquisition, construction, and/or maintenance of such project and improvements; to obtain money from such Federal Government agency or other sources for the purpose of financing said acquisition, and encumber the properties so acquired or constructed and the income, fees, rents, and other charges thereafter accruing to the said corporation in the operation of said properties; and to evidence the transaction by the issuance of bonds, notes, or warrants to secure the funds so obtained. But it is hereby expressly provided that the bonds, notes, and/or warrants so issued shall not constitute general obligation or indebtedness of the said corporation, but shall represent solely a charge upon specifically encumbered properties and the revenue therefrom, as herein provided.

**Application for Charter to Secretary of State;
Board of Directors**

Sec. 3. (a) The persons applying for a charter for such corporation shall make application to the Secretary of State in the manner now provided by law for private corporations and in the name designated for such corporation shall use the words "Water Supply Corporation." The application for charter shall name all the members of the board of directors. The number of directors may be increased from time to time by amendment to the by-laws but there shall never be more than twenty-one (21) members of said board.

(b) The by-laws of the Corporation may provide that the directors be divided into either two (2) or three (3) classes, each class to be as near equal in number as possible, the terms of office of directors of the first class to expire at the annual meeting of the shareholders after their election, that of the second class to expire at the second annual meeting after their election, and that of the third class, if any, to expire at the third annual meeting after their election. At each annual meeting after such classification the number of directors equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the second succeeding annual meeting, if there be two (2) classes, or until the third succeeding annual meeting, if there be three (3) classes. No classification of directors shall be effective prior to the first annual meeting of shareholders.

Acquisition of Water Supply; Operation of Plants and Equipment; Eminent Domain

Sec. 4. Such Water Supply Corporations shall have the right to purchase, own, hold and lease and otherwise acquire water wells, springs and other sources of water supply, to build, operate and maintain pipe lines for the transportation of water, to build and operate plants and equipment necessary for the distribution of water and to sell water to towns, cities and other political subdivisions of the State of Texas, to private corporations and to individuals. Such corporations shall have the right of eminent domain to acquire rights-of-way and shall have the right to use the rights-of-way of the public highways of the State for the laying of pipe lines under supervision of the State Highway Commission.

Annual Election of Officers and Board Meetings; Salaries

Sec. 5. After the issuance of a charter and annually thereafter following the annual membership or stockholders meeting, the board of directors shall elect a president, a vice president, and a secretary-treasurer and may require of such officers bonds for the faithful performance of their duties. The annual meeting of the members or stockholders of

the corporation shall be held at any time between January 1 and May 1 of each year, at such time as shall be specified by the by-laws or the board of directors of the corporation. The salaries of all the officers of said corporation except that of the secretary-treasurer and of the manager whose salary is hereinafter referred to, shall not exceed Five Thousand Dollars (\$5,000) per year. The salary of the secretary-treasurer shall be fixed by the board of directors at a sum commensurate with the duties required of him.

Manager Elected by Board of Directors

Sec. 6. The business of the corporation may be handled under the direction of the board of directors, by a manager to be elected by a majority vote of the board and he shall be employed at a salary to be fixed by the board of directors.

Board of Directors may Employ Counsel

Sec. 7. The Board of Directors may employ counsel to represent said corporation and may by agreement with him fix an annual retainer and the fees to be paid for his services and said Board of Directors may if they deem it necessary employ additional counsel from time to time.

Depository for Funds

*Text of section as amended by Acts 1961, 57th
Leg., p. 158, ch. 81, § 1*

Sec. 8. The Board of Directors shall select as depository for the funds of said corporation, a National Bank or State Bank within the State of Texas and shall require of said depository such bond as the Board deems necessary for the protection of said corporation; and such funds as the Board of Directors may from time to time allocate to a sinking fund for replacement, amortization of debts and the payment of interest which shall not be required to be expended within the year in which the same is deposited, shall be invested in bonds or other evidence of indebtedness of the United States of America or deposited at interest in such National Bank or State Bank in a savings account, or in shares or share accounts of Building and Loan Associations and Savings and Loan Associations doing business in this State when such shares are insured under and by virtue of the Federal Savings and Loan Insurance Corporation.

Depository for Funds

*Text of section as amended by Acts 1961, 57th
Leg., 1st C.S., p. 192, ch. 54, § 1*

Sec. 8. The board of directors shall select as depository for the funds of said corporation, a bank within the State of Texas which is insured with the Federal Deposit Insurance Corporation and shall require of said depository such bond as the board deems necessary for the protection of said corpora-

tion; and such funds as the board of directors may from time to time allocate to a sinking fund for replacement, amortization of debts and the payment of interest which shall not be required to be expended within the year in which the same is deposited shall be invested in bonds or other evidence of indebtedness of the United States of America or deposited at interest in such bank within the State of Texas which is insured with the Federal Deposit Insurance Corporation in a savings account.

Exemption from Texas Securities Act

Sec. 9. The provisions of the Texas Securities Act¹ shall not apply to any note, bond, or other evidence of indebtedness issued by any corporation doing business in this State pursuant to this Act, to the United States of America or any agency or instrumentality thereof, or to any mortgage, deed of trust or other instrument executed to secure the same. The provisions of said Securities Act shall not apply to the issuance of membership certificates or stock certificates of any corporation organized under the provisions of this Act.

[Acts 1933, 43rd Leg., 1st C.S., p. 202, ch. 76. Amended by Acts 1941, 47th Leg., p. 666, ch. 407, §§ 1, 2; Acts 1959, 56th Leg., p. 939, ch. 435, § 1; Acts 1961, 57th Leg., p. 158, ch. 81, § 1; Acts 1961, 57th Leg., 1st C.S., p. 192, ch. 54, §§ 1, 2; Acts 1967, 60th Leg., p. 804, ch. 338, § 1, eff. June 8, 1967; Acts 1973, 63rd Leg., p. 397, ch. 175, § 1, eff. May 25, 1973.]

¹ Article 581-1 et seq.

4. GAS AND LIGHT

Art. 1435. Powers

Gas, electric current and power corporations shall have power to generate, make and manufacture, transport and sell gas, electric current and power to individuals, the public and municipalities for light, heat, power and other purposes, and to make reasonable charges therefor; to construct, maintain and operate power plants and substations and such machinery, apparatus, pipes, poles, wires, devices and arrangements as may be necessary to operate such lines at and between different points in this State; to own, hold and use such lands, right of way, easements, franchises, buildings and structures as may be necessary for the purpose of such corporation. In Articles 1435 through 1438, the term "corporation" includes partnerships and other combinations composed exclusively of corporations.

[Acts 1925, S.B. 84. Amended by Acts 1983, 68th Leg., p. 5051, ch. 912, § 1, eff. June 19, 1983.]

Art. 1435a. Cooperation by Entities in Electric Facilities Construction, Financing, Etc.

Purpose of Act

Sec. 1. The purpose of this Act is to clarify and make definite and secure the right and authority of

entities, either public or private, which are engaged in the generation, transmission, or distribution of electric energy, to join together as cotenants or co-owners in the planning, financing, acquisition, construction, ownership, operation, and maintenance of electric generating units and plants, electric transmission lines, and other electric facilities to the end that each public entity or private entity will owe all of the duties and will have and be secure in all of the rights, powers, and liabilities and shall be entitled to all of the privileges and exemptions attributable to its undivided interest as provided by law with respect to an entire interest in electric facilities planned, financed, acquired, constructed, owned, operated, and maintained by it alone, as one means of achieving economies of scale in providing electric energy to the public and promoting the economic development of the state and its natural resources and to meet the future power needs of the state and its inhabitants. The provisions of this Act shall be construed to effectuate said purposes, but shall not be construed to otherwise enlarge, change, or modify in any way the rights, powers, or authorities of any entity under existing law with reference to the generation, transmission, distribution, or sale of electric power and energy. Nothing in this Act shall be construed to alter, change, abrogate, or otherwise affect existing contracts in force at the time this Act takes effect.

Definitions

Sec. 2. As used in this Act:

(1) "Entity" means any public or private corporation, association, or other legal entity, including cities and towns of every class, electric cooperative corporations, and conservation and reclamation districts, authorized to and engaged in the generation, transmission, or distribution of electric energy for sale to the public.

(2) "Public entity" means any entity which is an agency or subdivision of this state.

(3) "Private entity" means any entity not a public entity.

(4) "Electric facilities" means any facilities necessary or incidental to the generation of electric power and energy or the transmission thereof, including electric generating units, electric generating plants, electric transmission lines, plant sites, rights-of-way, and real and personal property and equipment and rights of every kind in connection therewith.

Agreements by Entities

Sec. 3. Any two or more entities shall have authority to enter into agreements for the planning, financing, acquisition, construction, ownership, operation, and maintenance of jointly owned and operated electric facilities and in connection therewith to construct, acquire, own, operate, and maintain electric facilities, and each public entity or private entity

shall owe all of the duties and shall have and be entitled to all of the rights, powers, and liabilities and shall be entitled to all of the privileges and exemptions attributable to its undivided interest which it would have with respect to an entire interest in electric facilities planned, financed, acquired, constructed, owned, operated, and maintained by it alone.

Rights and Powers of Participating Entities

Sec. 4. Without limiting the general scope and application of Section 3 of this Act:

(1) Each participating entity shall have the right and power to use its means and assets in planning, acquiring, constructing, owning, operating, and maintaining its undivided interest and share in electric facilities, and to issue bonds and other securities to raise funds for those purposes in the same way and to the same extent and subject to all of the conditions which would apply if the undivided interest of the entity were an entire interest in electric facilities.

(2) Each participating public entity and each participating private entity shall have the right and power to acquire, for the use and benefit of all participating entities, by purchase or through the exercise of the power of eminent domain, lands, easements, and properties for the purpose of jointly owned electric facilities, and shall have the power to transfer or convey such lands, easements, and properties, or interests therein, or otherwise to cause such lands, easements, and properties, or interests therein, to become vested in other participating entities to the extent and in the manner agreed between the participating entities. In all cases in which a participating entity exercises the right and power of eminent domain conferred hereby, it shall be controlled by the law governing the condemnation of property by incorporated cities and towns in this state, and the right and power of eminent domain hereby conferred shall include the right and power to take the fee title in land so condemned, except that no participating entity has the right or power to take by the exercise of the power of eminent domain any electric facilities, or interest therein, belonging to any other entity, or the power to take land or any interest therein, by exercise of the power of eminent domain, for the purpose of drilling for, mining, or producing from said land, any oil, gas, geothermal, geothermal/geopressured, lignite, coal, sulphur, uranium, plutonium, or other minerals belonging to another, whether the same be in place, or in the process of being mined and produced, or mined or produced. Provided, however, this provision shall not impair the right of any such entity to acquire full title to real property for plant sites, including cooling reservoirs and related surface installations and equipment.

(3) Each participating private entity shall render for ad valorem taxation its undivided fractional interest in a jointly owned electric facilities, and all ad valorem taxes and similar taxes shall be levied and assessed separately against the undivided interest of each participating private entity. All taxes or assessments (including but not limited to excise taxes and taxes on the sale, lease, or use of properties or services) attributable to any property or service bought, sold, leased, or used in connection with the construction, maintenance, repair, or operation of the jointly owned electric facilities shall be levied, imposed, and collected as if the property or service had been bought, sold, leased, or used separately to or by each participating entity in proportion to the entity's respective undivided interest in the jointly owned electric facilities. No participating entity shall be liable for ad valorem taxes attributable to another participating entity's interest in the joint electric facilities or for any other taxes attributable to any property or service which is owned or is bought, sold, leased, or used by any other participating entity in connection with the construction, maintenance, repair, or operation of the jointly owned electric facilities. Each participating entity shall be entitled to the same constitutional and statutory exemption from ad valorem taxes and all other taxes (including but not limited to excise, sales and use taxes) attributable to the participating entity's interest in the ownership of the jointly owned electric facilities and the purchase, sale, lease, or use of properties or services in connection with the construction, maintenance, repair, or operation of the jointly owned electric facilities to the extent that the entity would have been exempt from the tax if its undivided interest were an entire interest in electric facilities and in property and services used or acquired in connection therewith. Each exempt entity shall be entitled to exemption certificates and other certificates and statements as provided by law to evidence or make effective the exemption.

(4) Each participating entity shall have the right and power to enter into contracts for specialized insurance appertaining to property and risks in connection with and incident to the ownership, operation, and maintenance of electric facilities, in addition to the usual forms of available insurance. Each participating entity shall be authorized to enter into contracts for insurance for the use and benefit of each of the other participating entities as though the insurance were for its sole benefit and to cause the rights of the other participating entities to be protected under the contracts according to their respective undivided interests or entitlements under applicable agreements between the participating entities.

Joint Powers Agency

Sec. 4a. (a) In order to more readily accomplish the purposes of this Act, two or more public entities by concurrent ordinances may create a joint powers agency to be known as a municipal power agency, without taxing power, as a separate municipal corporation, a political subdivision of the state, and body politic and corporate, to have and exercise all of the powers which are by Chapter 10 of Title 28, Revised Civil Statutes of Texas, 1925, as amended,¹ and this Act, conferred upon a public entity or entities, provided that such agency shall not be authorized to engage in any utility business other than generation, transmission, and sale or exchange of electric energy to the participating public entities and to private entities who are joint owners with the agency of an electric generating facility located within the state. A public entity, at the time of the passage of such concurrent ordinance, must be one which has the authority to and is engaged in the generation of electric energy for sale to the public upon the effective date of this Act, but such entity may thereafter dispose of its electric generating capabilities. Prior to the passage of a concurrent ordinance to create a joint powers agency, the governing body of each public entity shall cause notice of its intention to adopt such ordinance to be published once a week for two consecutive weeks, the date of the first publication to be at least 14 days prior to the date set for the passage of the concurrent ordinance. The notice shall state the date, time, and place such governing body proposes to pass such ordinance, and that upon the effective date of the concurrent ordinances, the public entities so adopting them shall have created a public powers agency. If, prior to the day set for the passage of a concurrent ordinance, 10 percent of the qualified electors of the particular public entity shall present a petition to such governing body requesting a referendum election be called, then such ordinance shall not become effective until the qualified electors of such entity have approved such ordinance. The election shall be called and held in conformity with the Texas Election Code, the provisions of Chapter 1 of Title 22, Revised Civil Statutes of Texas, 1925, as amended,² and this Act. Except as herein provided, a concurrent ordinance shall not be subject to a referendum election.

(b) Public entities which establish a joint powers agency may, by concurrent ordinances, provide for the re-creation of such agency by the addition and deletion, either or both, of a public entity so long as there is no impairment of obligation of any existing obligation of the agency, provided that no agency may be re-created by the addition of a public entity from and after April 1, 1976, unless a majority of the participating qualified electors of the entity seeking to be added to the agency approve the same by a majority vote in an election called for that purpose, and provided further that no agency may

be created from and after January 1, 1977, unless a majority of the participating qualified electors of each entity seeking to create such agency approve such creation by a majority vote in an election called for that purpose. Notice of such election shall be given as provided by Article 704, Revised Civil Statutes of Texas, 1925, as amended.

(c) Concurrent ordinances are ordinances or orders adopted by the governing bodies of more than one public entity which contain identical provisions with respect to the creation or re-creation of a public powers agency.

(d) The public entities which create, or provide for re-creation by addition or deletion of a public entity, a joint powers agency shall by concurrent ordinances (1) define the boundaries of the agency, to include the territory within the limits of such public entities, (2) designate the name of the Municipal Power Agency, (3) designate the number of directors (not less than four) that will constitute the board of directors of the agency and the initial term (so as to initially provide staggered terms) as may be agreed upon by the said public entities as evidenced by such concurrent ordinances, and (4) specify the manner in which such directors shall be appointed, but in any event each public entity shall be entitled to appoint at least one director.

(e) Directors shall serve by places and the concurrent ordinances shall specify the director for which place (and his successors) the governing body of the particular public entity may appoint. A director shall be a qualified elector and reside within the boundary of the agency at the time of execution of his constitutional oath of office. Directors shall serve without compensation, and an employee, officer, or member of the governing body of a public entity may serve as a director of the agency, but shall have no personal interest, other than as may exist as an employee or officer or member of the governing body of a public entity, in any contract executed by the agency.

(f) The agency is empowered to make contracts, leases, and agreements with, and accept grants and loans from, the United States of America, its departments and agencies, the State of Texas, its agencies, counties, municipalities, 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; to participate through appropriate contracts in power pooling and power exchange arrangements with other entities either through direct or indirect system interconnections and each entity is given full authority to purchase electric energy from the agency or to sell, dispose of, or exchange electric energy to the agency. The agency may sell, lease, convey, or otherwise dispose of any of its rights, interests, or properties which are, in its judgment, not needed for the efficient operation and maintenance of its

electric facilities. The responsibility of the management, operation, and control of the properties belonging to the agency shall be vested in the board of directors.

(g) Contracts for the sale or exchange of energy by the agency may be entered whereby the purchaser is obligated to pay for the same irrespective of whether such energy is produced or delivered to the purchaser. The agency is likewise empowered to establish and maintain rates and charges for energy delivered, transmitted, or exchanged, which shall be reasonable and in accordance with prudent utility practices. In the absence of a contract whereby a purchaser of energy waives such right, the rates and charges for power and energy sold or exchanged by the agency shall be based upon periodic "cost of service studies" and be subject to modification. The rates and charges schedule or contract payments shall be developed with regard to the recovery of the cost of producing and transmitting, if such service is performed, such electric power and energy, including the amortization of the capital investment.

(h) The State of Texas reserves its power to regulate and control such rates and charges for electric energy supplied by the electric facilities, but does hereby pledge to and agree with the purchasers and successive holders of the obligations issued hereunder that the state will not limit or alter the powers hereby vested in the agency to establish and collect such rates and charges as will produce revenues sufficient to pay for (1) all necessary operational and maintenance expenses, (2) all interest and principal on obligations issued by the agency, (3) all sinking funds and reserve fund payments, and (4) for any other charges necessary to fulfill the terms of any agreements theretofore made or in any way to impair the rights or remedies of the holders of the obligations, until the obligations, together with the interest thereon, with interest on unpaid installments of interest, and any other obligations of the agency in connection therewith, are fully met and discharged.

(i) To the payment of obligations issued by it, the agency may pledge the revenues of all or part of its electric facilities, including or not including those thereafter acquired, as the agency may determine, but the expense of operation and maintenance, including salaries, labor, materials, and repairs necessary to render efficient service, of the facilities whose revenues are so encumbered and pledged shall be a first lien on and charge against such revenues.

(j) The agency shall have the full power to issue revenue bonds or notes, herein sometimes referred to as obligations, from time to time for the accomplishment of its purposes within the interest rate limitations of Chapter 3, Acts of the 61st Legisla-

ture, Regular Session, 1969, as amended (Article 717k-2, Vernon's Texas Civil Statutes).

(k) From the proceeds from the sale of obligations of the agency, the agency may set aside amounts for payments into the interest and sinking fund and reserve funds, and for interest and operating expenses during construction and development, as may be specified in the authorizing proceedings. Bond proceeds may be invested pending their use for the purpose for which issued, in such securities or interest bearing certificates or in time deposits as may be specified in such authorizing proceedings.

(l) Prior to delivery thereof, all obligations authorized to be issued hereunder and the records relating to their issuance shall be submitted to the Attorney General of Texas for examination, and if he finds that they have been issued in accordance with the constitution and this Act, and that they will be binding special obligations of the agency issuing same, he shall approve them, and thereupon they shall be registered by the Comptroller of Public Accounts of the State of Texas, and after such approval and registration and the sale and delivery of the bonds or notes to the purchaser, they shall be incontestable.

(m) Refunding bonds or notes may be issued for the purposes and in the manner now or hereafter provided by general law, including, without limitation, Chapter 503, Acts of the 54th Legislature, Regular Session, 1955, as amended (Article 717k, Vernon's Texas Civil Statutes), and Chapter 784, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-3, Vernon's Texas Civil Statutes), as presently enacted or hereafter amended.

(n) All obligations issued by an agency pursuant to this Act shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, and insurance companies and 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 obligations 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, if any, appurtenant thereto.

(o) The agency may adopt, and from time to time amend, rules and regulations to govern the operation of the agency, its employees, facilities, and service, but contracts for the construction of improvements which involve the expenditure of more than \$20,000 shall be awarded by the agency only after notice of intent to receive competitive bids has been published once a week for two consecutive weeks in a newspaper of general circulation in the state, the date of the first publication being at least

14 days prior to the date set for the receipt of bids, but contracts awarded by another entity, which is a joint owner of the facilities to be constructed or an agent of any of the joint owners shall be let under its contracting procedures. An entity may negotiate and enter into contract for the purchase of electric energy from the agency and payments for such energy purchased shall be an operating expense of the electric system of the purchaser.

(p) The agency may elect to utilize the Uniform System of Accounts Prescribed For Utilities and Licenses prescribed by the Federal Power Commission.

(q) The bonds or notes shall be signed by the presiding officer or the assistant presiding officer of the agency, shall be attested by its secretary, and shall bear the seal of the agency. It is provided, however, that such signatures may be printed or lithographed on the bonds and notes if authorized by the agency, and such may be impressed on the bonds or notes or may be printed or lithographed thereon. The agency may adopt or use for any purpose the signature of any person who shall have been an officer, notwithstanding the fact that he may have ceased to be such officer at the time when bonds or notes shall be delivered to a purchaser or purchasers. The bonds or notes shall mature serially or otherwise in not to exceed 50 years, from their respective dates of issuance, may be sold, within interest rate limitations herein provided, at a public or private sale at a price or under terms determined by the agency to be the most advantageous reasonably obtainable, within the discretion of the agency, may be made callable prior to maturity at such times and prices as approved by the agency, and may be in coupon form with or without provisions for registration as to principal or may be registrable as to both principal and interest.

(r) Bonds and notes issued under the provisions of this Act, and coupons, if any, representing interest thereon, when made payable from (i) revenues of the agency, or (ii) anticipated bond proceeds shall when delivered be deemed and construed to be a "security" within the meaning of Chapter 8, Investment Securities, of the Uniform Commercial Code (Chapter 785, Acts of the 60th Legislature, Regular Session, 1967),³ and shall constitute obligations which must be submitted to the attorney general under the provisions of Subsection (l) of this section. Nonnegotiable purchase money notes, payable in installments, issued by the agency for the acquisition of land or fuel resources shall not be a security or obligation within the aforesaid provisions; such notes shall be secured by the properties being acquired, with the right in the agency to substitute collateral, and may be further secured by a pledge and undertaking to thereafter issue bonds or bond anticipation notes for their ultimate payment. Bond anticipation notes may be issued, with the same

limitations and conditions prescribed herein for bonds, for any purpose for which the agency may issue bonds or for the purpose of refunding or paying off previously issued bond anticipation notes or nonnegotiable purchase money notes, and the agency may covenant with the purchaser of bond anticipation notes that the proceeds of one or more particular series of bonds will be used to provide for the ultimate payment or refunding of such notes.

(s) This Act shall be liberally construed to carry out the purpose of its adoption and shall be in full and complete authority for the creation and operation of public powers agencies and the performance of the public duties imposed upon them. Insofar as this Act is inconsistent with any other laws, including Chapter 10 of Title 28, Revised Civil Statutes of Texas, 1925, as amended, or others regulating the affairs of municipal corporations, or with any home-rule charter provisions, then the provisions of this Act shall control.

Certain Public Entities Provided Power Through Interstate System

Sec. 4b. Notwithstanding any term, condition, or provision of Section 4a of this Act to the contrary, any public entity which is an incorporated city, town, or village, which is engaged in the distribution and sale of electric energy to the public, and which is provided with a major portion of its power through or from an interstate electric system, may pass a concurrent ordinance as provided in and with the effect specified in Section 4a of this Act. Any municipal power agency which is or was created by two or more public entities described in the preceding sentence may engage in the generation and transmission of electric power and energy within or outside the State of Texas and may engage in the sale, purchase, or exchange of electric power and energy with entities within or outside the State of Texas; provided, that nothing in this section authorizes an agency to engage in the distribution and retail sale of electric power and energy; and provided further that any such municipal power agency may construct or acquire new steam electric generating facilities only if such facilities are to be jointly owned in part by one or more private entities. The election required by Subsection (b) of Section 4a of this Act need not be held in connection with the creation of any such agency unless the concurrent ordinances are passed after December 31, 1983.

Construction of Act

Sec. 5. Notwithstanding any other provision of this Act, nothing herein shall have the effect of, or be construed as, altering, amending, or repealing the statutory purposes provided for by any statute enacted by the legislature of Texas pertaining to the creation, establishment, or operation of an entity which becomes a co-owner under the provisions of this Act.

Severability

Sec. 6. If any provision of this Act or the application thereof to any person or circumstance shall be held to be invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby, and to this end the provisions of this Act are declared to be severable.

[Acts 1973, 63rd Leg., p. 369, ch. 166, eff. Aug. 27, 1973. Amended by Acts 1975, 64th Leg., p. 337, ch. 143, § 1, May 8, 1975; Acts 1977, 65th Leg., p. 174, ch. 85, §§ 1 to 3, eff. April 29, 1977; Acts 1979, 66th Leg., p. 885, ch. 405, § 1, eff. June 6, 1979; Acts 1981, 67th Leg., p. 48, ch. 23, § 1, eff. April 1, 1981; Acts 1983, 68th Leg., p. 971, ch. 230, § 1, eff. Aug. 29, 1983.]

¹ Article 1106 et seq.

² Article 701 et seq.

³ Business and Commerce Code, § 8.101 et seq.

Section 2 of the 1975 amendatory act provided:

"Nothing in this Act shall be construed to violate any provision of the federal or state constitutions, and all acts done under this Act shall be in such manner as will conform thereto, whether expressly provided or not. Where any procedure hereunder may be held by any court to be violative of either of such constitutions, the agency shall have the power by resolution to provide an alternative procedure conformable with such constitutions. If any provision of this Act should be invalid, such fact shall not affect the validity of any other provisions of this Act, and the legislature hereby declares that it would have enacted the valid provisions of this Act notwithstanding the invalidity of any other provision or provisions hereof."

For provisions relating to applicability and severability of 1981 amendment of this article, see art. 1435a-1, §§ 3 and 4.

Art. 1435a-1. Validation of Creation and Organization Proceedings of Certain Municipal Power Agencies

Sec. 1. [Amends art. 1435a, § 4b]

Sec. 2. The creation and organization proceedings of all municipal power agencies heretofore created or attempted to be created by two or more public entities prior to June 30, 1980, under Chapter 166, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 1435a, Vernon's Texas Civil Statutes), which have functioned or attempted to function as municipal power agencies since their creation or attempted creation are validated in all respects as of the date of the creation and organization or attempted creation and organization including, without limitation of the generality of the foregoing, the notices and concurrent ordinances or attempted notices and concurrent ordinances of public entities. The creation and organization proceedings and the existence of any such municipal power agency may not be held invalid because they were not in accordance with law.

Sec. 3. This Act does not apply to or affect any litigation instituted prior to the effective date of this Act which questions the legality of any acts taken or proceedings had prior to the effective date of this Act.

Sec. 4. If any word, clause, or provision of this Act or the application thereof shall be held to be invalid, the remainder of this Act shall not be affected thereby, and to this end the provisions of this Act are declared to be severable.

[Acts 1981, 67th Leg., p. 48, ch. 23, §§ 2 to 4, eff. April 1, 1981.]

Art. 1435b. Joint Acquisition, Construction, and Operation of Electric Utility Facilities

Authority for Two or More Political Subdivisions to Jointly Own and Operate; Treatment of Cost

Sec. 1. Two or more political subdivisions heretofore or hereafter created are authorized to join together to finance, construct, complete, acquire, or operate electric utility facilities so that the same (or an undivided interest therein) will be jointly owned as cotenants or coowners with such ownership shares in such facilities as may be approved by their governing bodies and set forth in an agreement authorized by said governing bodies. Such agreement may provide for any political subdivision to increase its present or future ownership share of the facilities by installment purchase payments and for any other political subdivision party to such agreement to transfer, in consideration of such installment purchase payments, all or any portion of its present or future ownership share of such facilities to the political subdivision, so increasing its present or future ownership share as aforesaid. Payments made to acquire an ownership interest shall not be treated as a maintenance and operating expense but shall be treated as a capital cost in the same manner as if such political subdivision had issued bonds to construct or acquire such ownership interest, unless otherwise set forth in the agreement of the parties. All agreements by and between political subdivisions establishing an ownership interest in facilities (or undivided interest therein) executed pursuant to this Act shall be submitted to the Attorney General of Texas (in connection with any proceedings to finance said contractual obligation by the issuance of bonds) and when approved as to legality by such officer shall be incontestable.

Payment of Contractual Obligations

Sec. 2. In the event the facilities financed, acquired, constructed, or completed constitute a part of a utility system or a combined utility system of a political subdivision, the obligation to make the said contract payments to acquire an ownership interest shall constitute a lien on the revenues of such system or combined system on a parity with outstanding bonds of such system or combined system to the extent permitted in the ordinance, resolution, deed of trust, or indenture authorizing or securing the payment of such outstanding bonds. In instance

es in which the ordinance, resolution, or deed of trust or trust indenture authorizing or securing such revenue bonds (whether such bonds have been issued prior to the passage of this Act or may be hereafter issued) provides for the subsequent issuance of additional bonds or incurring of such contractual obligation and that the payments to be made for the security or payment thereof are to be on a parity with or of equal dignity to the previously issued revenue bonds (whether an original issue or a refunding issue) or bonds then to be issued, such entity shall have the power to authorize, issue, and sell additional bonds or incur such contractual obligation from time to time and in different series payable from the entire revenues of such system or combined systems on a parity with bonds previously issued or then to be issued and secured by a lien on the revenues of such system or combined systems on a parity with and of equal dignity with the lien securing the bonds previously issued or then to be issued, subject to such conditions as may be contained in the ordinance, resolution, deed of trust, or trust indenture providing for or securing such issue of original bonds or refunding bonds.

The pledge of revenues of a utility system or a combined utility system for the payment of such contract payments to acquire an ownership interest is hereby approved and authorized.

Powers and Authority as Original

Sec. 3. The powers and authority granted by this Act shall be in addition to and in substitution for any powers and authority granted to political subdivisions under the laws of this state, and the exercise by any political subdivision of the powers and authority granted hereby and the performance or effectuation of any agreements entered into pursuant to the provisions hereof shall be deemed to constitute additional public purposes of such political subdivision (including the power to issue bonds, notes, or other obligations for the accomplishment of such purposes), notwithstanding the existence of any express or implied limitations of the powers, authority, or purposes under any other general or special laws or charter provisions.

As to municipal corporations, this law shall be given effect as though originally contained in Chapter 10 of Title 28, Revised Civil Statutes of Texas, 1925, as amended, so as to provide full authority for the execution of agreements contemplated by the provisions hereof, and this law shall prevail over any charter provisions or general or special law.

Validation of Existing Agreements

Sec. 4. All agreements heretofore executed by and between political subdivisions whereby the parties will jointly own electric utility facilities or whereby one political subdivision agrees to pay the other as a maintenance and operating expense of all

or part of its utility systems for services supplied or to be supplied from facilities owned by the other are hereby validated, ratified, and confirmed provided that such agreements have been heretofore submitted to the Attorney General of Texas in connection with the issuance of bonds and are on file in the office of the comptroller of public accounts and provided further that such agreements are not in litigation upon the effective date of this Act.

Severability

Sec. 5. If any word, phrase, clause, paragraph, sentence, part, portion, or provision of this Act or the application thereof to any person or circumstances shall be held to be invalid or unconstitutional, the remainder of 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 1977, 65th Leg., p. 1287, ch. 506, §§ 1 to 5, eff. Aug. 29, 1977.]

Art. 1436. Right of Way

Such corporation shall have the right and power to enter upon, condemn and appropriate the lands, right-of-way, easements and property of any person or corporation, and shall have the right to erect its lines over and across any public road, railroad, railroad right-of-way, interurban railroad, street railroad, canal or stream in this State, any street or alley of any incorporated city or town in this State with the consent and under the direction of the governing body of such city or town. Such lines shall be constructed upon suitable poles in the most approved manner, or pipes may be placed under the ground, as the exigencies of the case may require.

[Acts 1925, S.B. 84. Amended by Acts 1967, 60th Leg., p. 730, ch. 306, § 1, eff. Aug. 28, 1967.]

Art. 1436a. Construction of Lines on and across Roads and Streets

Corporations

Sec. 1. Corporations organized under the Electric Cooperative Corporation Act¹ of this State, and all other corporations (including River Authorities created by the Legislature of this State) engaged in the generation, transmission and/or the distribution of electric energy in Texas and whose operations are subject to the Judicial and Legislative processes of this State, shall have the right to erect, construct, maintain and operate lines over, under, across, upon and along any State highway or county road in this State, except within the limits of an incorporated city or town; and to maintain and operate existing lines located on such highways and county roads; and to erect, maintain and operate lines over, across and along the streets, alleys and other public property in any incorporated city or town in this State,

with the consent and under the direction of the governing body of such city or town. Except as modified or changed by ordinance or regulation in incorporated cities and towns, all lines for the transmission and distribution of electric energy, whether along highways or elsewhere, shall be constructed, operated and maintained, as to clearances, in accordance with the National Electrical Safety Code, as published in March, 1948, by the National Bureau of Standards, Handbook 30, as revised by Handbook 81, published by the National Bureau of Standards in November, 1961, provided that lines along highways and county roads shall be single pole construction, and provided that at any place where a transmission line crosses a highway or road it shall be at least twenty-two (22) feet above the surface of the traffic lane, and further provided that all lines shall be at least twenty-two (22) feet above the surface of any railroad track or railroad siding. Any such corporation shall notify the State Highway Commission, or the Commissioners Court having jurisdiction, as the case may be, when it proposes to build lines along the right-of-way of any State highway, or county road, outside the limits of an incorporated city or town, whereupon the Highway Commission, or the Commissioners Court, may, if it so desires, designate the place along the right-of-way where such lines shall be constructed. The public agency having jurisdiction or control of a highway or county road, that is, the Highway Commission or the Commissioners Court, as the case may be, may require any such corporation, at its own expense, to re-locate its lines on a State highway or county road outside the limits of an incorporated city or town, so as to permit the widening of the right-of-way, changing of traffic lanes, improvement of the road bed, or improvement of drainage ditches located on such right-of-way by giving thirty (30) days' written notice to such corporation and specifying the line or lines to be moved, and indicating the place on the new right-of-way where such line or lines may be placed. In the event a State highway or county road on which lines have been built passes through or into an unincorporated city or town, which thereafter becomes an incorporated city or town, the corporation owning such lines shall continue to have the right to build, maintain and operate its lines along, across, upon and over the roads and streets within the corporate limits of such city or town for a period of ten (10) years from and after the date of such incorporation, but thereafter only with the consent of the governing body of such city or town, but this provision shall not be construed as prohibiting such city or town from levying taxes and such special charges for the use of the streets as are authorized by Article 7060, Revised Civil Statutes of the State of Texas; and the governing body of such city or town may require any such corporation, at its own expense, to re-locate its poles and lines so as to permit the widening or straightening of streets, by giving to such corporation thirty (30) days' notice

and specifying the new location for such poles and lines along the right-of-way of such street or streets.

Municipal Plants and Systems

Sec. 1a. Any incorporated city or town in this State which owns and operates an electric generating plant or operates transmission lines and/or distribution system or systems shall have the right to erect, construct, maintain and operate lines over, under, across, upon and along any state highway or county road in this State, except within the limits of another incorporated city or town; and to maintain and operate existing lines located on such highways and county roads; and to erect, maintain and operate lines over, across and along the streets, alleys and other public property in any other incorporated city or town in this State with the acquiescence or consent and under the regulations of the governing body of such city or town. Except as modified or changed by ordinance or regulation in incorporated cities and towns, all lines for the transmission and distribution of electric energy, whether along highways or elsewhere, shall be constructed, operated and maintained in accordance with the National Electrical Safety Code, as published in March, 1948, by the National Bureau of Standards, Handbook 30, as revised by Handbook 81, published by the National Bureau of Standards in November, 1961, provided that lines along highways and county roads shall be single pole construction, and provided that at any place where a transmission line crosses a highway or road it shall be at least twenty-two (22) feet above the surface of the traffic lane, and further provided that all lines shall be at least twenty-two (22) feet above the surface of any railroad track or railroad siding. Any such incorporated city or town authorized to build lines along highways and public roads under this Section shall notify the State Highway Commission or the Commissioners Court having jurisdiction, as the case may be, when it proposes to build lines along the right-of-way of any state highway, or county road, outside the limits of an incorporated city or town, whereupon the Highway Commission, or the Commissioners Court, may, if it so desires, designate the place along the right-of-way where such lines shall be constructed. The public agency having jurisdiction or control of a highway or county road, that is, the Highway Commission or the Commissioners Court, as the case may be, may require any such municipal corporation, at its own expense, to re-locate its lines on a State highway or county road outside the limits of an incorporated city or town, so as to permit the widening of the right-of-way, changing of traffic lanes, improvement of the road bed, or improvement of drainage ditches located on such right-of-way, by giving thirty (30) days' written notice to such municipal corporation owning such lines, and specifying the line or lines to be

moved, and indicating the place on the new right-of-way where such line or lines may be placed. In the event a State highway or county road on which lines have been built passes through or into an unincorporated city or town, which thereafter becomes an incorporated city or town, the municipal corporation owning such lines shall continue to have the right to build, maintain and operate its lines along, across, upon and over the roads and streets within the corporate limits of such city or town for a period of ten (10) years from and after the date of such incorporation, but thereafter only with the consent of the governing body of such city or town; and the governing body of such city or town may require the municipal corporation owning such lines, at its own expense, to relocate its poles and lines so as to permit the widening or straightening of streets, by giving to the municipal corporation owning such lines thirty (30) days' notice and specifying the new location for such poles and lines along the right-of-way of such street or streets. Nothing herein shall be construed as granting the right to such municipal corporation to maintain existing lines in any area, which is included within the corporate limits of another city or town prior to the effective date of this Act, without the consent of the governing body of such other city or town.

Repealer

Sec. 2. All Statutes or parts of Statutes in conflict with the provisions of this Act are hereby expressly repealed.

Partial Invalidity

Sec. 3. If any section, sentence, phrase, clause, or any part of any section, sentence, phrase or clause of this Act shall, for any reason, be held invalid, such decision shall not affect the remaining portions of this Act and it is hereby declared to be the intention of this Legislature to have passed each section, sentence, phrase, clause or part thereof irrespective of the fact that any other section, sentence, phrase or clause or part thereof may be declared invalid.

[Acts 1949, 51st Leg., p. 427, ch. 228. Amended by Acts 1967, 60th Leg., pp. 730, 731, ch. 306, § 2, eff. Aug. 28, 1967.]

¹ Article 1528b.

Section 1 of the act of 1967 amended article 1436; sections 3 and 4 provided:

"Sec. 3. All other statutes, or parts of statutes, in conflict with the provisions of this Act are hereby expressly repealed; provided, however, that this Act does not amend, repeal or alter Chapter 300, Acts of the 55th Legislature, Regular Session, 1957 (Article 6674w-1 through Article 6674w-5, Vernon's Texas Civil Statutes), and provided further, this section shall not change, modify or limit the rights granted corporations, cities and towns in Section 2 of this Act.

"Sec. 4. If any section, sentence, phrase, clause, or any part of any section, sentence, phrase or clause of this Act shall, for any reason, be held invalid, such decision shall not affect the remaining portions of this Act, and it is hereby declared to be the intention of this Legislature to have passed each section, sentence, phrase, clause, or part thereof irrespective of the fact that any other

section, sentence, phrase or clause or part thereof may be declared invalid."

Section 2 of the act of 1949 provided that all statutes or parts of statutes in conflict with the provisions of this Act are hereby expressly repealed.

Section 4, declaring an emergency, recites that the distribution of electric energy has been based on the legal concept that Commissioners Courts had authority to grant franchises for the use of roads and highways, but that the Supreme Court has held that Commissioners Courts have no such authority.

Art. 1436b. Use of Roads and Streets in Distribution of Gas

Sec. 1. Any person, firm or corporation or incorporated city or town engaged in the business of transporting or distributing gas for public consumption shall have the power to lay and maintain pipes, mains, conductors and other facilities used for conducting gas through, under, along, across and over all public highways, public roads, public streets and alleys, and public waters within this State; provided that within the corporate limits of an incorporated city or incorporated town such right shall be dependent upon the consent and subject to the direction of its governing body. Any such person, firm or corporation or incorporated city or town shall notify the State Highway Commission or the Commissioners Court having jurisdiction, as the case may be, when it proposes to lay any such pipes, mains, conductors and other fixtures for conducting gas within the right-of-way of any state highway or county road outside the limits of an incorporated city or incorporated town, whereupon the Highway Commission or the Commissioners Court, if it so desires, may designate the place upon the right-of-way where the same shall be laid. The public agency having jurisdiction or control of a highway or county road, that is, the Highway Commission or the Commissioners Court, as the case may be, may require any such person, firm or corporation or incorporated city or town at its own expense to relocate its pipes, mains, conductors or other fixtures for conducting gas on a state highway or county road outside the limits of an incorporated city or incorporated town so as to permit the widening or changing of traffic lanes, by giving thirty (30) days written notice to such person, firm or corporation or incorporated city or town and specifying the facility or facilities to be moved and indicating the place on the new right-of-way where such facility or facilities may be placed. Such person, firm or corporation or incorporated city or town shall replace the grade and surface of such road or highway at its own expense.

Sec. 2. If after the effective date of this Act an unincorporated area becomes incorporated, any person, firm or corporation or incorporated city or town which, at the date of such incorporation, has pipes, mains, conductors or other facilities within such area so incorporated, may continue to exercise the rights conferred by Section 1 hereof for ten (10) years after the date of such incorporation without

consent but subject to the direction of the governing body.

Sec. 3. All laws or parts of laws in conflict with the provisions of this Act, to the extent of such conflict only, are hereby expressly repealed.

Sec. 4. If any section, sentence, phrase, clause or any part of any section, sentence, phrase or clause of this Act shall for any reason be held invalid, such decision shall not affect the remaining portions of this Act; and it is hereby declared to be the intention of this Legislature to have passed each section, sentence, phrase, clause, or part thereof, irrespective of the fact that any other section, sentence, phrase or clause or part thereof may be declared invalid.

[Acts 1951, 52nd Leg., p. 829, ch. 470.]

Art. 1436c. Safety of Persons Engaged in Activities in Proximity of High Voltage Electric Lines; Restrictions

Definitions

Sec. 1. In this Act:

(1) "High voltage" means voltage in excess of 600 volts measured between conductors or measured between a conductor and the ground.

(2) "Overhead line" means all bare or insulated electrical conductors installed above ground except those conductors that are de-energized and grounded or that are enclosed in rigid metallic conduit.

(3) "Authorized person" means:

(A) employees of a light and power company with respect to the electrical system of such company, employees of an electric cooperative with respect to the electrical system of such cooperative, employees of a city with respect to the electrical system of such city, and the employees of a transportation system with respect to the electrical circuits of such system;

(B) employees of communication utilities, or state and county or municipal agencies having authorized circuit construction on the poles or the structures of an electric power company, an electric cooperative, a city or transportation system or communication system;

(C) employees of an industrial plant with respect to the electrical system of such plant;

(D) employees of any electrical or communications contractor with respect to work under his supervision.

(4) "Warning sign" means a weather-resistant sign of not less than five inches by seven inches with a yellow background and black lettering reading as follows: **"WARNING—UNLAWFUL TO OPERATE THIS EQUIPMENT WITHIN SIX FEET OF HIGH VOLTAGE LINES."**

Exceptions

Sec. 2. This Act does not apply to the construction, reconstruction, operation, and maintenance of overhead electrical or communication circuits or conductors and their supporting structures and associated equipment of rail transportation systems, electrical generating, transmission or distribution systems, or communication systems by an authorized person.

Six-foot Restriction; Functions or Activities of Employees

Sec. 3. Unless danger against contact with high voltage overhead lines has been effectively guarded against pursuant to the provisions of Section 6 of this Act, no person, firm, corporation, or association shall require any employee to perform and no person, firm, corporation, or association shall, individually or through an agent or employee, perform any function or activity upon any land, building, highway, or other premises if at any time during the performance of any function or activity, it is possible that the person performing the function or activity shall move or be placed within six feet of any high voltage overhead line or if it is possible for any part of any tool, equipment, machinery, or material used by such person to be brought within six feet of any high voltage overhead line during the performance of any such function or activity.

Six-foot Restriction; Operation of Machinery, Etc.

Sec. 4. Unless danger against contact with high voltage overhead lines has been effectively guarded against pursuant to the provision of Section 6 of this Act, no person, firm, corporation, or association shall, individually or through an agent or employee, erect, install, operate, move, transport, handle, or store any tool, machinery, equipment, supplies, materials, house, or other building or structure or any part thereof within six feet of any high voltage overhead line.

Posting of Warning Signs, Insulated Guards

Sec. 5. No person, firm, corporation, or association shall, individually or through an agent or employee, or as an agent or employee, operate any crane, derrick, power shovel, drilling rig, hayloader, haystacker, mechanical cotton picker, pile driver, hoisting equipment, or similar apparatus, any part of which is capable of vertical, lateral, or swinging motion, unless:

(1) there is posted and maintained a warning sign, as herein defined, legible at 12 feet and placed as follows:

(A) within the equipment readily visible to the operator of such equipment when at the controls of such equipment; and

(B) on the outside of equipment in such number and location as to be readily visible to mechanics or other persons engaged in the work operations; and

(2) there shall be installed an insulated cage-type guard or protective device about the boom or arm of all equipment, except backhoes or dippers and, where the equipment includes a lifting hook device, all lifting lines are equipped with insulator links on the lift hook connection.

Ten-foot Restriction; Operation of Equipment

Sec. 5A. In addition to the minimum distances prescribed in Sections 3 and 4 of this Act, the operation of equipment or machines described in Section 5 or any part of such equipment or machines within 10 feet of any high voltage overhead line shall be unlawful unless danger against contact with high voltage overhead lines has been effectively guarded against pursuant to the provisions of Section 6 of this Act.

Temporary Clearance of Lines

Sec. 6. When any person, firm, or corporation desires to temporarily carry on any function, activity, work, or operation in closer proximity to any high voltage overhead line than permitted by this Act, the person or persons responsible for the work to be done shall promptly notify the operator of the high voltage line. The work shall be performed only after satisfactory mutual arrangements have been negotiated between the owner or the operator of the lines or both and the person or persons responsible for the work to be done for temporary mechanical barriers separating and preventing contact between material, equipment, or persons and high voltage electric lines, temporary de-energization and grounding, or temporary relocation or raising of the lines. The actual expense incurred by any operator of high voltage lines in providing clearances as above set out shall be paid by the person or persons responsible for the work to be done in the vicinity thereof and the operator of the lines may require such payment in advance, such operator being without obligation to provide such clearance until such payment shall have been made. Should the actual expense be less than the payment made the difference shall be refunded. The operator of the lines shall be given not less than 48 hours' advance notice to arrange for such temporary clearances.

Violations and Penalties

Sec. 7. (a) Every person, firm, corporation, or association and every agent or employee of such person, firm, corporation, or association who violates any of the provisions of this Act shall be fined not less than \$100, nor more than \$1,000 or confined in jail for not more than one year or both.

(b) If a violation of this Act results in physical or electrical contact with any high voltage overhead line, the person, firm, corporation, or association violating the provisions of this Act shall be liable to the owner or operator of such high voltage line for all damage to such facilities and for all liability incurred by such owner or operator as a result of any such contact.

[Acts 1971, 62nd Leg., p. 76, ch. 41, eff. March 30, 1971.]

Art. 1437. Finances

Such corporation shall have the right to borrow money, to issue stock and preferred stock, to mortgage its franchises and property to secure the payment of any debt contracted for any of the purposes of such corporation, and shall possess all the rights and powers of corporations for profit in this State, whenever the same may be applicable.

[Acts 1951, 52nd Leg., p. 829, ch. 470.]

Art. 1438. Discrimination

It shall be unlawful for any such corporation to discriminate against any person, corporation, firm, association or place, in the charge for such gas, electric current or power, or in the service rendered under similar and like circumstances.

[Acts 1951, 52nd Leg., p. 829, ch. 470.]

Art. 1438a. Repealed by Acts 1967, 60th Leg., vol. 2, p. 2343, ch. 785, § 4, eff. Sept. 1, 1967

Acts 1967, 60th Leg., vol. 2, p. 2343, ch. 785, adopting the Business & Commerce Code, repealed article 1438a effective September 1, 1967.

5. SEWERAGE

Art. 1439. Eminent Domain

Every company or corporation incorporated under the laws of this State for the purpose of owning, constructing or maintaining a system of sewerage in any city or town in this State, shall be empowered by the exercise of the right of eminent domain, to condemn private property through which to lay, construct and maintain sewer pipes, mains and laterals, and connections, and also private property upon which to maintain vats, filtration pipes and other pipes, such property to be used and occupied as a place for ultimate disposition of sewage, in or out of the town or city limits, whenever it be made to appear that the use of any such private property is necessary for the successful operation of such sewer system, and when it also be made to appear that such sewer system is beneficial to the public use, health or convenience. The right of condemnation herein permitted shall not be invoked nor exercised within the corporate limits of the city or town, except as permitted or required by the city or town

granting franchise to the company or corporation seeking the right of condemnation.

[Acts 1925, S.B. 84.]

6. DEPOSITS

Art. 1440. Deposit for Installing Service

Every person, firm, company, corporation, receiver or trustee engaged in the furnishing of water, light, gas or telephone service which requires the payment on the part of the user of such service a deposit of money as a condition precedent to furnishing the same, shall pay six per cent (6%) interest per annum on such deposit to the one making same, or to his heirs or assigns, from the time of such deposit, the same to be paid annually on demand or sooner if such service be discontinued. When such service is discontinued, such deposit, together with any unpaid interest thereon, or such part of such deposit and unpaid interest, not consumed in bills due for such service, shall be returned to such depositor, his heirs or legal representatives.

[Acts 1925, S.B. 84. Amended by Acts 1963, 58th Leg., p. 50, ch. 32, § 1.]

Art. 1440a. Deposit for Installing Service

Every person, firm, company, corporation, receiver or trustee engaged in the furnishing of water, light, gas or telephone service which requires the payment on the part of the user of such service a deposit of money as a condition precedent to furnishing any such service, shall pay six per cent (6%) interest per annum on such deposit to the one making same, or to his heirs or assigns, from the time of such deposit, the same to be paid annually on demand, or sooner if such service be discontinued. When such service is discontinued, such deposit, together with any unpaid interest thereon, or such part of such deposit and unpaid interest not consumed in bills due for such service, shall be returned to such depositor, his heirs or legal representatives. Whoever violates any provision of this Article shall be fined not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200), or be confined in jail not less than six (6) months nor more than one year, or both.

[Acts 1925, S.B. 84. Amended by Acts 1963, 58th Leg., p. 50, ch. 32, § 2.]

7. REPORTS

Arts. 1441 to 1446. Repealed by Acts 1981, 67th Leg., p. 2382, ch. 593, § 1, eff. Aug. 31, 1981

8. MISCELLANEOUS PROVISIONS

Art. 1446a. Disruption of Gas, Electric or Water Service by Picketing, Threats or Intimidation

Policy and Purpose

Sec. 1. It is hereby declared the policy of this state that continuous service by public utilities fur-

nishing electric energy, natural or artificial gas, or water to the public is absolutely essential to the life, health and safety of all of the people, and that the wilful interruption or stoppage of such services by any person or group of persons is a public calamity which cannot be endured. "Utilities" as herein defined are dedicated to the service of the public, and the primary duty of such a utility, its management and employees, is the maintenance of continuous and adequate service at all times in order that the safety and health of the people may be protected against the danger inherent in the disruption or cessation of such service. All courts and all administrative agencies of this state are enjoined to recognize this policy and in particular, to interpret and to apply this Act in accordance with such policy.

Definitions

Sec. 2. When used in this Act, the term "public utility" or "utility" shall mean and include the following:

(a) Any private corporation doing business in Texas, and having the right of eminent domain, and engaged in the business of generating, transmitting or distributing electric energy to the public; or

(b) Any private corporation doing business in Texas, and having the right of eminent domain, and engaged in the business of producing, transmitting, or distributing natural or artificial gas to the public; or

(c) Any private corporation doing business in Texas, and having the right of eminent domain, and engaged in the business of furnishing water to the public; or

(d) Any state agency, authority, subdivision or municipality engaged in the business of furnishing any of the above described services to the public.

Unlawful Picketing, Threats or Intimidation

Sec. 3. It shall be unlawful for any person or persons to picket the plant, premises or any part of the property of a public utility, as defined herein, with the intent to disrupt the service of such utility or to prevent the maintenance thereof, or if such picketing has the effect of disrupting the service or preventing the maintenance thereof. It shall be unlawful for any person or persons to intimidate, threaten or harass any employee of such utility with the intention of disrupting its service or preventing the maintenance thereof, or if such intimidation, threats or harassment has the effect of disrupting the service of such utility, or preventing the maintenance thereof.

Restraining Order; Venue

Sec. 4. When any utility, as defined herein, shall present a verified petition to the Judge of any District Court, alleging that within such judicial

district a person or persons are violating the provisions of Section 3 of this Act, or are threatening to violate said provisions, and that such violation or threatened violation will prevent or interfere with the maintenance of adequate water service or electric or gas service, and describes the acts done or committed which are in violation of said Section 3, or the threatened acts which, if committed, will violate the provisions thereof, it shall be the duty of the Judge to forthwith inquire into the matter, and if it appears that the provisions of Section 3 are being violated, or that there is a threat to violate said provisions, he shall immediately issue an order restraining such person or persons, their agents, and all parties acting with them from committing any acts or doing any of the things prohibited by the provisions of Section 3 hereof, said restraining order to become effective when the plaintiff shall have filed with the clerk of said court a good and sufficient bond to cover such court costs as may reasonably accrue in connection with the case, the amount of which cost bond shall be fixed by the court. The cause shall be docketed and tried as in the case of other suits for writs of injunction, except that no judgment rendered therein shall be superseded pending appeal. The venue of suits of this character shall be in any District Court in any judicial district in which the violation or threat to violate the provisions of Section 3 hereof may occur, and the various District Judges shall have full authority to enforce all orders and writs of injunction issued to protect the life, health and safety of the public.

Sabotage; Penalty

Sec. 5. Any person who shall wilfully damage or destroy any building, equipment, machinery or facility used in furnishing utility service by any utility as defined in Section 2 hereof, or who interferes with, or commits any act of sabotage affecting any machinery, equipment, or facilities of any such utility for the purpose of disrupting the service provided by such utility, or for the purpose of preventing the maintenance of such service, shall be 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.

The word "sabotage" as used in this Act shall be construed to include any intentional tampering with, obstructing, breaking, damaging, changing or in any way interfering with any building, machinery, structure, wires, poles, towers, pumps, pipe lines, meters, switches, transformers, or any other equipment or property of any sort used by a utility as defined herein in furnishing water, gas, or electric service.

Conspiracy; Penalty

Sec. 5-a. If any two or more persons shall enter into any agreement, compact, or plan to violate any

of the provisions of Section 5 of this Act, or any agreement, compact, or plan to persuade, induce or employ some person to violate the provisions of said section, every person participating in such agreement, compact or plan shall be guilty of a felony, and, upon conviction, shall be punished by confinement in the state penitentiary for not less than two (2) nor more than five (5) years. In order that such offense be complete, it shall not be necessary that an overt act be committed pursuant to such agreement, compact or plan. The provisions of this section shall be cumulative of other statutes relating to conspiracy.

Enforcement by Executive Department

Sec. 6. In accordance with the declared policy of this state, as set out in Section 1 hereof, it shall be the duty of the Governor, and of the Executive Department under his direction, to exercise all of the powers available under the constitution and laws of the state to protect the public from the dangers incident to stoppage or interruption in water, electric or gas utility service in any place in Texas, because of a violation of any of the provisions of this Act.

Rights of Employees

Sec. 7. Nothing in this Act shall be construed as a limitation upon the right of any employee of a public utility to quit work and to leave the premises of his employer at any time he chooses so to do, or to refuse to report for work when he so desires.

Severability

Sec. 8. If any section, subsection, paragraph, sentence or clause of this Act shall be held invalid, unconstitutional or inoperative, such holding shall not affect the validity of the remaining portions of the Act; but the remainder of the Act shall be given effect as if such invalid, unconstitutional or inoperative portion had not been included, and the Legislature hereby declares that it would have passed the remainder of the Act regardless of the inclusion or exclusion of such portion.

[Acts 1947, 50th Leg., p. 142, ch. 84.]

Art. 1446b. Fraudulently Obtaining Telecommunications Services

Sec. 1. In this Act:

(1) "Telecommunications service" means the transmission of a message or other information by a public utility, including a telephone or telegraph company.

(2) "Publish" means the communication or dissemination of information to another by any means.

Sec. 2. (a) A person commits an offense if he:

(1) publishes an existing, cancelled, revoked, or nonexistent telephone number, a credit number or

other credit device, or a method of numbering or coding that is used in the issuance of telephone numbers or credit numbers or other credit devices knowing that other persons will use the published information to avoid payment of a charge for telecommunication service;

(2) makes or possesses any equipment specifically designed to be used to fraudulently avoid charges for telecommunications services.

(b) A violation of this section is a misdemeanor punishable by a fine of not more than \$500, by imprisonment in jail for not more than sixty days, or by both, unless the person has been previously convicted of a violation of this section, in which event it is a felony punishable by a fine of not more than \$5,000, by imprisonment in the penitentiary for not less than two years or more than five years, or by both.

Sec. 3. Equipment described in Subdivision (2), Subsection (a), Section 2, may be seized by a peace officer under warrant or incident to a lawful arrest. On conviction of the person who possessed the equipment of a violation of this Act, the court shall order the sheriff to destroy the equipment.

Sec. 4. The provisions of this Act do not apply to an employee of a public utility that provides telecommunications service while acting in the course of his employment.

[Acts 1973, 63rd Leg., p. 880, ch. 397, eff. June 13, 1973.]

Art. 1446c. Public Utility Regulatory Act

ARTICLE I. SHORT TITLE, LEGISLATIVE POLICY, AND DEFINITIONS

Short Title

Sec. 1. This Act may be referred to as the "Public Utility Regulatory Act."

Legislative Policy and Purpose

Sec. 2. This Act is enacted to protect the public interest inherent in the rates and services of public utilities. The legislature finds that public utilities are by definition monopolies in the areas they serve; that therefore the normal forces of competition which operate to regulate prices in a free enterprise society do not operate; and that therefore utility rates, operations and services are regulated by public agencies, with the objective that such regulation shall operate as a substitute for such competition. The purpose of this Act is to establish a comprehensive regulatory system which is adequate to the task of regulating public utilities as defined by this Act, to assure rates, operations, and services which are just and reasonable to the consumers and to the utilities.

Definitions

Sec. 3. (a) The term "person," when used in this Act, includes natural persons, partnerships of two or more persons having a joint or common interest, mutual or cooperative associations, water supply or sewer service corporations, and corporations, as herein defined.

(b) The term "municipality," when used in this Act, includes cities and incorporated villages or towns existing, created, or organized under the general, home-rule, or special laws of the state.

Text of subsec. 3(c) as amended by Acts 1983, 68th Leg., p. 496, ch. 99, § 2

(c) The term "public utility" or "utility," when used in this Act, includes any person, corporation, river authority, cooperative corporation, or any combination thereof, other than a municipal corporation or a water supply or sewer service corporation, or their lessees, trustees, and receivers, now or hereafter owning or operating for compensation in this state equipment or facilities for:

(1) producing, generating, transmitting, distributing, selling, or furnishing electricity ("electric utilities" hereinafter) provided, however, that this definition shall not be construed to apply to or include a qualifying small power producer or qualifying co-generator, as defined in Sections 3(17)(D) and 3(18)(C) of the Federal Power Act, as amended (16 U.S.C. Sections 796(17)(D) and 796(18)(C));

(2) the conveyance, transmission, or reception of communications over a telephone system; provided that no person or corporation not otherwise a public utility within the meaning of this Act shall be deemed such solely because of the furnishing or furnishing and maintenance of a private system; and provided further that nothing in this Act shall be construed to apply to telegraph services, services of specialized communications common carriers not providing local exchange telephone service, television stations, radio stations, community antenna television services, or radio-telephone services that may be authorized under the Domestic Public Land Mobile Radio Service or Rural Radio Service rules of the Federal Communications Commission, other than such radio-telephone services provided by wire-line telephone companies;

(3) transmitting or distributing combustible hydrocarbon natural or synthetic natural gas for sale or resale in a manner which is not subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act (15 U.S.C.A., Section 717, et seq.) ("gas utilities" hereinafter) provided that the production, gathering, transportation, or sale of natural gas or synthetic gas under Section 4, Article 6050, Revised Civil Statutes of Texas, 1925, as amended, the distribution or sale of liquified petroleum or compressed natural gas, and the transportation, delivery, or sale of natural gas

for fuel for irrigation wells or any other direct use in agricultural activities is not included;

(4) the transmitting, storing, distributing, selling, or furnishing of potable water to the public or for resale to the public for any use, or the collection, transportation, treatment, or disposal of sewage, or other operation of a sewage disposal service for the public, other than equipment or facilities owned and operated for either purpose by a city, town or other political subdivision of this state or a water supply or sewer service corporation. The term "public utility" or "utility" shall not include any person or corporation not otherwise a public utility that furnishes the services or commodity described in any paragraph of this subsection only to itself, its employees, or tenants as an incident of such employee service or tenancy, when such service or commodity is not resold to or used by others. The term "electric utility" shall not include any person or corporation not otherwise a public utility that owns or operates in this state equipment or facilities for producing, generating, transmitting, distributing, selling, or furnishing electric energy to an electric utility, if the equipment or facilities are used primarily for the production and generation of electric energy for consumption by the person or corporation.

Text of subsec. 3(c) as amended by Acts 1983, 68th Leg., p. 1217, ch. 263, § 21

(c) The term "public utility" or "utility," when used in this Act, includes any person, corporation, river authority, cooperative corporation, or any combination thereof, other than a municipal corporation or a water supply or sewer service corporation, or their lessees, trustees, and receivers, now or hereafter owning or operating for compensation in this state equipment or facilities for:

(1) producing, generating, transmitting, distributing, selling, or furnishing electricity ("electric utilities" hereinafter) provided, however, that this definition shall not be construed to apply to or include a qualifying small power producer or qualifying co-generator, as defined in Sections 3(17)(D) and 3(18)(C) of the Federal Power Act, as amended (16 U.S.C. Sections 796(17)(D) and 796(18)(C));

(2) the conveyance, transmission, or reception of communications over a telephone system; provided that no person or corporation not otherwise a public utility within the meaning of this Act shall be deemed such solely because of the furnishing or furnishing and maintenance of a private system; and provided further that nothing in this Act shall be construed to apply to telegraph services, services of specialized communications common carriers not providing local exchange telephone service, television stations, radio stations, community antenna television services, or radio-telephone services that may be authorized under the Domestic Public Land

Mobile Radio Service or Rural Radio Service rules of the Federal Communications Commission, other than such radio-telephone services provided by wire-line telephone companies;

(3) the transmitting, storing, distributing, selling, or furnishing of potable water to the public or for resale to the public for any use, or the collection, transportation, treatment, or disposal of sewage, or other operation of a sewage disposal service for the public, other than equipment or facilities owned and operated for either purpose by a city, town or other political subdivision of this state or a water supply or sewer service corporation. The term "public utility" or "utility" shall not include any person or corporation not otherwise a public utility that furnishes the services or commodity described in any paragraph of this subsection only to itself, its employees, or tenants as an incident of such employee service or tenancy, when such service or commodity is not resold to or used by others. The term "electric utility" shall not include any person or corporation not otherwise a public utility that owns or operates in this state equipment or facilities for producing, generating, transmitting, distributing, selling, or furnishing electric energy to an electric utility, if the equipment or facilities are used primarily for the production and generation of electric energy for consumption by the person or corporation.

Text of subsec. 3(c) as amended by Acts 1983, 68th Leg., p. 1259, ch. 274, § 1

(c) The term "public utility" or "utility," when used in this Act, includes any person, corporation, river authority, cooperative corporation, or any combination thereof, other than a municipal corporation or a water supply or sewer service corporation, or their lessees, trustees, and receivers, now or hereafter owning or operating for compensation in this state equipment or facilities for:

(1) producing, generating, transmitting, distributing, selling, or furnishing electricity ("electric utilities" hereinafter) provided, however, that this definition shall not be construed to apply to or include a qualifying small power producer or qualifying co-generator, as defined in Sections 3(17)(D) and 3(18)(C) of the Federal Power Act, as amended (16 U.S.C. Sections 796(17)(D) and 796(18)(C));

(2)(A) the conveyance, transmission, or reception of communications over a telephone system as a dominant carrier as hereinafter defined ("telecommunications utilities" hereinafter); provided that no person or corporation not otherwise a public utility within the meaning of this Act shall be deemed such solely because of the furnishing or furnishing and maintenance of a private system or the manufacture, distribution, installation, or maintenance of customer premise communications equipment and accessories; and provided further that nothing in

this Act shall be construed to apply to telegraph services, television stations, radio stations, community antenna television services, or radio-telephone services that may be authorized under the Public Mobile Radio Services rules of the Federal Communications Commission, other than such radio-telephone services provided by wire-line telephone companies under the Domestic Public Land Mobile Radio Service and Rural Radio Service rules of the Federal Communications Commission; and provided further that specialized communications common carriers, resellers of communications, and other communications carriers who convey, transmit, or receive communications in whole or in part over a telephone system who are not dominant carriers are also telecommunications utilities, but the commission's regulatory authority as to them is only as hereinafter defined;

(B) "dominant carrier" when used in this Act means (i) a provider of any particular communication service which is provided in whole or in part over a telephone system who as to such service has sufficient market power in a telecommunications market as determined by the commission to enable such provider to control prices in a manner adverse to the public interest for such service in such market; and (ii) any provider of local exchange telephone service within a certificated exchange area as to such service. A telecommunications market shall be statewide until January 1, 1985. After this date the commission may, if it determines that the public interest will be served, establish separate markets within the state. Prior to January 1, 1985, the commission shall hold such hearings and require such evidence as is necessary to carry out the public purpose of this Act and to determine the need and effect of establishing separate markets. Any such provider determined to be a dominant carrier as to a particular telecommunications service in a market shall not be presumed to be a dominant carrier of a different telecommunications service in that market.

(3) the transmitting, storing, distributing, selling, or furnishing of potable water to the public or for resale to the public for any use, or the collection, transportation, treatment, or disposal of sewage, or other operation of a sewage disposal service for the public, other than equipment or facilities owned and operated for either purpose by a city, town or other political subdivision of this state or a water supply or sewer service corporation. The term "public utility" or "utility" shall not include any person or corporation not otherwise a public utility that furnishes the services or commodity described in any paragraph of this subsection only to itself, its employees, or tenants as an incident of such employee service or tenancy, when such service or commodity is not resold to or used by others. The term "electric utility" shall not include any person or corporation not otherwise a public utility that owns or operates in this state equipment or facilities for

producing, generating, transmitting, distributing, selling, or furnishing electric energy to an electric utility, if the equipment or facilities are used primarily for the production and generation of electric energy for consumption by the person or corporation.

(d) The term "rate," when used in this Act, means and includes every compensation, tariff, charge, fare, toll, rental, and classification, or any of them demanded, observed, charged, or collected whether directly or indirectly by any public utility for any service, product, or commodity described in Subdivision (c) of this section, and any rules, regulations, practices, or contracts affecting any such compensation, tariff, charge, fare, toll, rental, or classification.

(e) The word "commission," when used in this Act, means the Public Utility Commission of Texas, as hereinafter constituted.

(f) Repealed by Acts 1983, 68th Leg., p. 1222, ch. 263, § 25, eff. Sept. 1, 1983.

(g) The term "regulatory authority," when used in this Act, means, in accordance with the context where it is found, either the commission or the governing body of any municipality.

(h) "Affected person" means any public utility affected by any action of the regulatory authority, any person or corporation whose utility service or rates are affected by any proceeding before the regulatory authority, or any person or corporation that is a competitor of a public utility with respect to any service performed by the utility or that desires to enter into competition.

(i) "Affiliated interest" or "affiliate" means:

(1) any person or corporation owning or holding, directly or indirectly, five percent or more of the voting securities of a public utility;

(2) any person or corporation in any chain of successive ownership of five percent or more of the voting securities of a public utility;

(3) any corporation five percent or more of the voting securities of which is owned or controlled, directly or indirectly, by a public utility;

(4) any corporation five percent or more of the voting securities of which is owned or controlled, directly or indirectly, by any person or corporation that owns or controls, directly or indirectly, five percent or more of the voting securities of any public utility or by any person or corporation in any chain of successive ownership of five percent of such securities;

(5) any person who is an officer or director of a public utility or of any corporation in any chain of successive ownership of five percent or more of voting securities of a public utility;

(6) any person or corporation that the commission, after notice and hearing, determines actually exercises any substantial influence or control over the policies and actions of a public utility, or over which a public utility exercises such control, or that is under common control with a public utility, such control being the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of another, whether such power is established through ownership or voting of securities or by any other direct or indirect means; or

(7) any person or corporation that the commission after notice and hearing determines is actually exercising such substantial influence over the policies and action of the public utility in conjunction with one or more persons or corporations with which they are related by ownership or blood relationship, or by action in concert, that together they are affiliated with such public utility within the meaning of this section, even though no one of them alone is so affiliated.

(j) "Allocations" means, for all utilities, the division of plant, revenues, expenses, taxes, and reserves between municipalities or between municipalities and unincorporated areas, where such items are used for providing public utility service in a municipality, or for a municipality and unincorporated areas.

(k) "Commissioner" means a member of the Public Utility Commission of Texas.

(l) "Cooperative corporation" means any telephone or electric cooperative corporation organized and operating under the Telephone Cooperative Act (Article 1528c, Vernon's Texas Civil Statutes) or the Electric Cooperative Corporation Act (Article 1528b, Vernon's Texas Civil Statutes).

(m) "Corporation" means any corporation, joint-stock company, or association, domestic or foreign, and its lessees, assignees, trustees, receivers, or other successors in interest, having any of the powers or privileges of corporations not possessed by individuals or partnerships, but shall not include municipal corporations unless expressly provided otherwise in this Act.

(n) "Facilities" means all the plant and equipment of a public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any public utility.

(o) "Municipally-owned utility" means any utility owned, operated, and controlled by a municipality or by a nonprofit corporation whose directors are appointed by one or more municipalities.

(p) "Order" means the whole or a part of the final disposition, whether affirmative, negative, injunctive, or declaratory in form, of the regulatory authority in a matter other than rulemaking, but including issuance of certificates of convenience and necessity and ratesetting.

(q) "Proceeding" means any hearing, investigation, inquiry, or other fact-finding or decision-making procedure under this Act and includes the denial of relief or the dismissal of a complaint.

(r) "Separation" means, for communications utilities only, the division of plant, revenues, expenses, taxes, and reserves, applicable to exchange or local service where such items are used in common for providing public utility service to both local exchange service and other service, such as interstate or intrastate toll service.

(s) "Service" is used in this Act in its broadest and most inclusive sense, and includes any and all acts done, rendered, or performed and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities in the performance of their duties under this Act to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them. Service shall not include the printing, distribution, or sale of advertising in telephone directories.

(t) "Test year" means the most recent 12 months for which operating data for a public utility are available and shall commence with a calendar quarter or a fiscal year quarter.

(u) "Water supply or sewer service corporation" means a nonprofit, member-owned corporation organized and operating under Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933, as amended (Article 1434a, Vernon's Texas Civil Statutes).

Applicability of Administrative Procedure and Texas Register Act

Sec. 4. The Administrative Procedure and Texas Register Act¹ applies to all proceedings under this Act except to the extent inconsistent with this Act.

¹ Article 6252-13a.

ARTICLE II. ORGANIZATION OF COMMISSION; OFFICE OF PUBLIC UTILITY COUNSEL

Creation of Commission; Appointment and Terms; Chairman

Sec. 5. A commission, to be known as the "Public Utility Commission of Texas" is hereby created. It shall consist of three commissioners, who shall be appointed to staggered, six-year terms by the governor, with the advice and consent of two-thirds of the members of the senate present, and who shall have and exercise the jurisdiction and powers herein con-

ferred upon the commission. Each commissioner shall hold office until his successor is appointed and qualified. At its first meeting following the biennial appointment and qualification of a commissioner, the commission shall elect one of the commissioners chairman. Appointments to the commission shall be made without regard to the race, creed, sex, religion, or national origin of the appointees.

Application of Sunset Act

Sec. 5a. The Public Utility Commission of Texas and the Office of Public Utility Counsel are subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the commission and the Office of Public Utility Counsel are abolished, and this Act expires effective September 1, 1995.

Qualifications; Oath and Bond; Prohibited Activities

Sec. 6. (a) To be eligible for appointment as a commissioner, a person must be a qualified voter, not less than 30 years of age, a citizen of the United States, and a resident of the State of Texas. No person is eligible for appointment as a commissioner if at any time during the two-year period immediately preceding his appointment he personally served as an officer, director, owner, employee, partner, or legal representative of any public utility or any affiliated interest, or he owned or controlled, directly or indirectly, stocks or bonds of any class with a value of \$10,000, or more in a public utility or any affiliated interest. Each commissioner shall qualify for office by taking the oath prescribed for other state officers and shall execute a bond for \$5,000 payable to the state and conditioned on the faithful performance of his duties. 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 public utility counsel or act as the general counsel to the commission.

(b) No commissioner or employee of the commission may do any of the following during his period of service with the commission:

(1) have any pecuniary interest, either as an officer, director, partner, owner, employee, attorney, consultant, or otherwise, in any public utility or affiliated interest, or in any person or corporation or other business entity a significant portion of whose business consists of furnishing goods or services to public utilities or affiliated interests, but not including a nonprofit group or association solely supported by gratuitous contributions of money, property or services;

(2) own or control any securities in a public utility or affiliated interest, either directly or indirectly;

(3) accept any gift, gratuity, or entertainment whatsoever from any public utility or affiliated interest, or from any person, corporation, agent, representative, employee, or other business entity a significant portion of whose business consists of furnishing goods or services to public utilities or affiliated interests, or from any agent, representative, attorney, employee, officer, owner, director, or partner of any such business entity or of any public utility or affiliated interest; provided, however, that the receipt and acceptance of any gifts, gratuities, or entertainment after termination of service with the commission whose cumulative value in any one-year period is less than \$100 shall not constitute a violation of this Act.

(c) The prohibited activities of this section do not include contracts for public utility products and services or equipment for use of public utility products when a member or employee of the commission is acting as a consumer.

(d) No commissioner or employee of the commission may directly or indirectly solicit or request from or suggest or recommend to, any public utility, or to any agent, representative, attorney, employee, officer, owner, director, or partner thereof, the appointment to any position or the employment in any capacity of any person by such public utility or affiliated interest.

(e) No public utility or affiliated interest or any person, corporation, firm, association, or business that furnishes goods or services to any public utility or affiliated interest, nor any agent, representative, attorney, employee, officer, owner, director, or partner of any public utility or affiliated interest, or any person, corporation, firm, association, or business furnishing goods or services to any public utility or affiliated interest may give, or offer to give, any gift, gratuity, employment, or entertainment whatsoever to any member or employee of the commission except as allowed by Subdivision (3) of Subsection (b) of this section, nor may any such public utility or affiliated interest or any such person, corporation, firm, association, or business aid, abet, or participate with any member, employee, or former employee of the commission in any activity or conduct that would constitute a violation of this subsection or Subdivision (3) of Subsection (b) of this section.

(f) It shall not be a violation of this section if a member of the commission or a person employed by the commission, upon becoming the owner of any stocks or bonds or other pecuniary interest in a public utility or affiliated interest under the jurisdiction of the commission otherwise than voluntarily, informs the commission and the attorney general of such ownership and divests himself of the ownership or interest within a reasonable time. In this section, a "pecuniary interest" includes income, compensation and payment of any kind, in addition

to ownership interests. It is not a violation of this section if such a pecuniary interest is held indirectly by ownership of an interest in a retirement system, institution, or fund which in the normal course of business invests in diverse securities independently of the control of the commissioner or employee.

(g) Unless specifically authorized by this Act for disposition of ex parte matters, no member or employee of the commission assigned to render a decision or to make findings of fact and conclusions of law in a proceeding may communicate, directly or indirectly, in connection with any issue of fact or law with any party or his representative, except on notice and opportunity for all parties to participate.

(h) No member of the commission may seek nomination or election to any other civil office of the State of Texas or of the United States while he is a commissioner. If any member of the commission files for nomination for or election to any civil office of the State of Texas or of the United States, his office as commissioner immediately becomes vacant, and the governor shall appoint a successor.

(i) No commissioner shall within two years, and no employee shall, within one year after his employment with the commission has ceased, be employed by a public utility which was in the scope of the commissioner's or employee's official responsibility while the commissioner or employee was associated with the commission.

(j) During the time a commissioner or employee of the commission is associated with the commission or at any time after, the commissioner or employee may not represent a person, corporation, or other business entity before the commission or a court in a matter in which the commissioner or employee was personally involved while associated with the commission or a matter that was within the commissioner's or employee's official responsibility while the commissioner or employee was associated with the commission.

(k) The commission shall require its members and employees to read this section and as often as necessary shall provide information regarding their responsibilities under applicable laws relating to standards of conduct for state officers and employees.

Grounds for Removal; Validity of Actions

Sec. 6A. (a) 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 Section 6 of this Act for appointment to the commission; or

(2) does not maintain during the service on the commission the qualifications required by Section 6 of this Act for appointment to the commission.

(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.

Vacancies

Sec. 7. Whenever a vacancy in the office of commissioner occurs, it shall be filled in the manner provided herein with respect to the original appointment, except that the governor may make interim appointments to continue until the vacancy can be filled in the manner provided. Any person appointed with the advice and consent of the senate to fill a vacancy shall hold office during the unexpired portion of the term.

Employees

Sec. 8. (a) The commission shall employ such officers, administrative law judges, hearing examiners, investigators, lawyers, engineers, economists, consultants, statisticians, accountants, administrative assistants, inspectors, clerical staff, and other employees as it deems necessary to carry out the provisions of this Act. All employees receive such compensation as is fixed by the legislature.

(b) The commission shall employ the following:

(1) an executive director;

(2) a director of hearings who has wide experience in utility regulation and rate determination;

(3) a chief engineer who is a registered engineer and an expert in public utility engineering and rate matters;

(4) a chief accountant who is a certified public accountant, experienced in public utility accounting;

(5) a director of research who is experienced in the conduct of analyses of industry, economics, energy, fuel, and other related matters that the commission may want to undertake;

(6) a director of consumer affairs and public information;

(7) a director of utility evaluation;

(8) a director of energy conservation; and

(9) a general counsel.

(c) The general counsel and his staff are responsible for the gathering of information relating to all matters within the authority of the commission.

The duties of the general counsel include:

(1) accumulation of evidence and other information from public utilities and from the accounting and technical and other staffs of the commission and from other sources for the purposes specified herein;

(2) preparation and presentation of such evidence before the commission or its appointed examiner in proceedings;

(3) conduct of investigations of public utilities under the jurisdiction of the commission;

(4) preparation of proposed changes in the rules of the commission;

(5) preparation of recommendations that the commission undertake investigation of any matter within its authority;

(6) preparation of recommendations and a report of such staff for inclusion in the annual report of the commission;

(7) protection and representation of the public interest and coordination and direction of the preparation and presentation of evidence from the commission staff in all cases before the commission as necessary to effect the objectives and purposes stated in this Act and ensure protection of the public interest; and

(8) such other activities as are reasonably necessary to enable him to perform his duties.

(d) The commission shall employ administrative law judges to preside at hearings of major importance before the commission. An administrative law judge must be a licensed attorney with not less than five years' general experience or three years' experience in utility regulatory law. The administrative law judge shall perform his duties independently from the commission. The commission and parties who may appear before the commission may not communicate with an administrative law judge concerning any issue of fact or law in a contested case that has not been finally decided by the commission, except on notice and opportunity for all parties to participate.

(e) The executive director or his designee shall develop an intraagency career ladder program, one part of which shall be the intraagency posting of all nonentry level positions for at least 10 days before any public posting. The executive director or his designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for commission employees must be based on the system established under this section.

(f) The executive director or his/her designee 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.

Salary

Sec. 9. The annual salary of the commissioners shall be determined by the legislature.

Office; Meetings

Sec. 10. The principal office of the commission shall be located in the City of Austin, Texas, and shall be open daily during the usual business hours, Saturdays, Sundays, and legal holidays excepted. The commission shall hold meetings at its office and at such other convenient places in the state as shall be expedient and necessary for the proper performance of its duties.

Seal

Sec. 11. The commission shall have a seal bearing the following inscription: "Public Utility Commission of Texas." The seal shall be affixed to all records and authentications of copies of records and to such other instruments as the commission shall direct. All courts of this state shall take judicial notice of said seal.

Quorum

Sec. 12. A majority of the commissioners shall constitute a quorum for the transaction of any business, for the performance of any duty, or for the exercise of any power of the commission. No vacancy or disqualification shall prevent the remaining commissioner or commissioners from exercising all the powers of the commission.

Orders; Transcript and Exhibits; Public Records

Sec. 13. All orders of the commission shall be in writing and shall contain detailed findings of the facts upon which they are passed. The commission shall retain a copy of the transcript and the exhibits in any matter in which the commission issues an order. All files pertaining to matters which were at any time pending before the commission and to records, reports, and inspections required by Article V hereof shall be public records, subject to the terms of the Texas Open Records Act, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973,

as amended (Article 6252-17a, Vernon's Texas Civil Statutes).

Annual Report

Sec. 14. (a) The commission shall publish an annual report to the governor, summarizing its proceedings, listing its receipts and the sources of its receipts, listing its expenditures and the nature of such expenditures, and setting forth such other information concerning the operations of the commission and the public utility industry as it considers of general interest.

(b) In the annual report issued in the year preceding the convening of each regular session of the legislature, the commission shall make such suggestions regarding modification and improvement of the commission's statutory authority and for the improvement of utility regulation in general as it may deem appropriate for protecting and furthering the interest of the public.

Consumer Information

Sec. 14A. 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.

Attorney General to Represent Commission

Sec. 15. The Attorney General of the State of Texas shall represent the commission in all matters before the state courts, and any court of the United States, and before any federal public utility regulatory commission.

Office of Public Utility Counsel

Sec. 15A. (a) The independent Office of Public Utility Counsel is hereby established to represent the interests of residential and small commercial consumers.

(b) The chief executive of the Office of Public Utility Counsel is the public utility counsel, hereinafter referred to as counsellor. The counsellor is appointed by the governor with the advice and consent of the senate to a two-year term that expires on February 1 of the final year of the term. Immediately after this section takes effect, the governor shall, with the advice and consent of the senate, appoint the public utility counsel.

(c) The counsellor may employ such lawyers, economists, engineers, consultants, statisticians, accountants, clerical staff, and other employees as he or she deems necessary to carry out the provisions of this section. All employees shall receive such compensation as is fixed by the legislature from the assessment imposed by Section 78 of this Act.

(d) The counsellor shall be a resident of Texas and admitted to the practice of law in this state who has demonstrated a strong commitment and involvement in efforts to safeguard the rights of the public and possesses the knowledge and experience necessary to practice effectively in utility proceedings.

(e) During the period of the counsellor's employment and for a period of two years following the termination of employment, it shall be unlawful for any person employed as counsellor to have a direct or indirect interest in any utility company regulated under the Public Utility Regulatory Act, to provide legal services directly or indirectly to or be employed in any capacity by a utility company regulated under the Public Utility Regulatory Act, its parent, or its subsidiary companies, corporations, or cooperatives; but such person may otherwise engage in the private practice of law after the termination of employment as the counsellor.

(f) The Office of Public Utility Counsel:

(1) shall assess the impact of utility rate changes and other regulatory actions on residential consumers in the State of Texas and shall be an advocate in its own name of positions most advantageous to a substantial number of such consumers as determined by the counsellor;

(2) may appear or intervene as a matter of right as a party or otherwise on behalf of residential consumers, as a class, in all proceedings before the commissions;

(3) may appear or intervene as a matter of right as a party or otherwise on behalf of small commercial consumers, as a class, in all proceedings where it is deemed by the counsel that small commercial consumers are in need of representation.

(4) may initiate or intervene as a matter of right or otherwise appear in any judicial proceedings involving or arising out of any action taken by an administrative agency in a proceeding in which the counsel was authorized to appear;

(5) may have access as any party, other than staff, to all records gathered by the commission under the authority of Subsection (a) of Section 29 of this Act;

(6) may obtain discovery of any nonprivileged matter which is relevant to the subject matter involved in any proceeding or petition before the commission;

(7) may represent individual residential and small commercial consumers with respect to their disputed complaints concerning utility services unresolved before the commission; and

(8) may recommend legislation to the legislature which in its judgment would positively affect the interests of residential and small commercial consumers.

(g) Nothing in this section shall be construed as in any way limiting the authority of the commission to represent residential or small commercial consumers.

(h) The appearance of the Public Counsel in any proceeding in no way precludes the appearance of other parties on behalf of residential ratepayers or small commercial consumers. The Public Counsel shall not be grouped with any other parties.

(i) There shall be only one Office of Public Utility Counsel even though that office may be referenced in one or more Acts of the 68th Legislature.

ARTICLE III. JURISDICTION

General Power; Rules; Hearings; Statewide and Utility Electrical Energy Forecasts; Reports; Audits

Sec. 16. (a) The commission has the general power to regulate and supervise the business of every public utility within its jurisdiction and to do all things, whether specifically designated in this Act or implied herein, necessary and convenient to the exercise of this power and jurisdiction. The commission shall make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules governing practice and procedure before the commission. The commission may call and hold hearings, administer oaths, receive evidence at hearings, issue subpoenas to compel the attendance of witnesses and the production of papers and documents, and make findings of fact and decisions with respect to administering the provisions of this Act or the rules, orders, or other actions of the commission.

(b) The commission shall develop a long-term statewide electrical energy forecast which shall be sent to the governor biennially. The forecast will include an assessment of how alternative energy sources, conservation, and load management will meet the state's electricity needs.

(c) Every generating electric utility in the state shall prepare and transmit to the commission by December 31, 1983, and every two years thereafter a report specifying at least a 10-year forecast for assessments of load and resources for its service area. The report shall include a list of facilities which will be required to supply electric power during the forecast periods. The report shall be in a form prescribed by the commission. The report shall include:

(1) a tabulation of estimated peak load, resources, and reserve margins for each year during the forecast or assessment period;

(2) a list of existing electric generating plants in service with a description of planned and potential generating capacity at existing sites;

(3) a list of facilities which will be needed to serve additional electrical requirements identified in the

forecasts or assessments, the general location of such facilities, and the anticipated types of fuel to be utilized in the proposed facilities, including an estimation of shutdown costs and disposal of spent fuel for nuclear power plants;

(4) a description of additional system capacity which might be achieved through, among other things, improvements in (A) generating or transmission efficiency, (B) importation of power, (C) interstate or interregional pooling, (D) other improvements in efficiencies of operation; and (E) conservation measures;

(5) an estimation of the mix and type of fuel resources for the forecast or assessment period;

(6) an annual load duration curve and a forecast of anticipated peak loads for the forecast or assessment period for the residential, commercial, industrial, and such other major demand sectors in the service area of the electric utility as the commission shall determine; and

(7) a description of projected population growth, urban development, industrial expansion, and other growth factors influencing increased demand for electric energy and the basis for such projections.

(d) The commission shall establish and every electric utility shall utilize a reporting methodology for preparation of the forecasts of future load and resources.

(e) The commission shall review and evaluate the electric utilities' forecast of load and resources and any public comment on population growth estimates prepared by Bureau of Business Research, University of Texas at Austin.

(f) Within 12 months after the receipt of the reports required in Subsection (b)¹ of this section, the commission shall hold a public hearing and subsequently issue a final report to the governor and notify every electric utility of the commission's electric forecast for that utility. The commission shall consider its electric forecast in all certification proceedings covering new generation plant.

(g) The commission shall make and enforce rules to encourage the economical production of electric energy by qualifying cogenerators and qualifying small power producers.

(h) The commission shall inquire into the management of the business of all public utilities under its jurisdiction, shall keep itself informed as to the manner and method in which the management and business is conducted, and shall obtain from any public utility all necessary information to enable the commission to perform management audits. The commission may audit each utility under the jurisdiction of the commission as frequently as needed, but shall audit each utility at least once every 10 years. Six months after any audit, the utility shall report to the commission on the status of the imple-

mentation of the recommendations of the audit and shall file subsequent reports at such times as the commission deems appropriate.

¹ So in enrolled bill; probably should read "(c)".

Jurisdiction of Municipality; Surrender; Original and Appellate Jurisdiction of Commission

Sec. 17. (a) Subject to the limitations imposed in this Act, and for the purpose of regulating rates and services so that such rates may be fair, just, and reasonable, and the services adequate and efficient, the governing body of each municipality shall have exclusive original jurisdiction over all electric, water, and sewer utility rates, operations, and services provided by an electric, water, and sewer utility within its city or town limits.

(b) At any time after two years have passed from the date this Act becomes effective, a municipality may elect to have the commission exercise exclusive original jurisdiction over electric, water, or sewer utility rates, operations, and services within the incorporated limits of the municipality. The governing body of a municipality may by ordinance elect to surrender its original jurisdiction to the commission, or the governing body may submit the question of the surrender to the qualified voters at a municipal election. Upon receipt of a petition signed by the lesser of 20,000 or ten percent of the number of qualified voters voting in the last preceding general election in that municipality, the governing body shall submit the question of the surrender of the municipality's original jurisdiction to the commission at a municipal election.

(c) A municipality that surrenders its jurisdiction to the commission may at any time, by vote of the electorate, reinstate the jurisdiction of the governing body; provided, however, that any municipality which reinstates its jurisdiction shall be unable to surrender that jurisdiction for five years after the date of the election at which the municipality elected to reinstate its jurisdiction. No municipality may, by vote of the electorate, reinstate the jurisdiction of the governing body during the pendency of any case before the commission involving the municipality.

(d) The commission shall have exclusive appellate jurisdiction to review orders or ordinances of such municipalities as provided in this Act.

(e) The commission shall have exclusive original jurisdiction over electric, water, and sewer utility rates, operations, and services not within the incorporated limits of a municipality exercising exclusive original jurisdiction over those rates, operations, and services as provided in this Act.

Telecommunications Utilities

Sec. 18. (a) It is the policy of this state to protect the public interest in having adequate and efficient telecommunications service available to all

citizens of the state at just, fair, and reasonable rates. The legislature finds that the telecommunications industry through technical advancements, federal judicial and administrative actions, and the formulation of new telecommunications enterprises has become and will continue to be in many and growing areas a competitive industry which does not lend itself to traditional public utility regulatory rules, policies, and principles; and that therefore, the public interest requires that new rules, policies, and principles be formulated and applied to protect the public interest and to provide equal opportunity to all telecommunications utilities in a competitive marketplace. It is the purpose of this section to grant to the commission the authority and the power under this Act to carry out the public policy herein stated.

(b) Subject to the limitations imposed in this Act, and for the purpose of carrying out the public policy above stated and of regulating rates, operations, and services so that such rates may be just, fair, and reasonable, and the services adequate and efficient, the commission shall have exclusive original jurisdiction over the business and property of all telecommunications utilities in this state. In the exercise of its jurisdiction to regulate the rates, operations, and services of a telecommunications utility providing service in a municipality on the state line adjacent to a municipality in an adjoining state, the commission may cooperate with the utility regulatory commission of the adjoining state or the federal government and may hold joint hearings and make joint investigations with any of those commissions.

(c) The commission shall only have the following jurisdiction over all specialized communications common carriers, resellers of communications, and other communications carriers who convey, transmit, or receive communications in whole or in part over a telephone system who are not dominant carriers:

(1) to require registration as provided in Subsection (d) of this section;

(2) to conduct such investigations as are necessary to determine the existence, impact, and scope of competition in the telecommunications industry, including identifying dominant carriers and defining the telecommunications market or markets, and in connection therewith may call and hold hearings, issue subpoenas to compel the attendance of witnesses and the production of papers and documents, and make findings of fact and decisions with respect to administering the provisions of this Act or the rules, orders, and other actions of the commission; and

(3) to require the filing of such reports as the commission may direct from time to time.

(d) All providers of communications service described in Subsection (c) of this section who are

providing such service to the public on the effective date of this Act shall register with the commission within 90 days of the effective date of this Act. All providers of communications service described in Subsection (c) of this section who commence such service to the public thereafter shall register with the commission within 30 days of commencing service. Such registration shall be accomplished by filing with the commission a description of the location and type of service provided, the cost to the public of such service, and such other registration information as the commission may direct.

Sec. 19. Repealed by Acts 1983, 68th Leg., p. 1222, ch. 263, § 25, eff. Sept. 1, 1983.

Municipally Owned Utilities

Sec. 20. Nothing in this article shall be construed to confer on the commission power or jurisdiction to regulate or supervise the rates or service of any utility owned and operated by any municipality within its boundaries either directly or through a municipally owned corporation, or to affect or limit the power, jurisdiction, or duties of the municipalities that have elected to regulate and supervise public utilities within their boundaries, except as provided in this Act.

ARTICLE IV. MUNICIPALITIES

Franchises

Sec. 21. Nothing in this Act shall be construed as in any way limiting the rights and powers of a municipality to grant or refuse franchises to use the streets and alleys within its limits and to make the statutory charges for the use thereof, but no provision of any franchise agreement shall limit or interfere with any power conferred on the commission by this Act. If a municipality performs regulatory functions under this Act, it may make such other charges as may be provided in the applicable franchise agreement, together with any other charges permitted by this Act.

Local Utility Service; Exempt and Nonexempt Areas

Sec. 22. Notwithstanding any other provision of this section, municipalities shall continue to regulate each kind of local utility service inside their boundaries until the commission has assumed jurisdiction over the respective utility pursuant to this Act. If a municipality does not surrender its jurisdiction, local utility service within the boundaries of the municipality shall be exempt from regulation by the commission under the provisions of this Act to the extent that this Act applies to local service, and the municipality shall have, regarding service within its boundaries, the right to exercise the same regulatory powers under the same standards and rules as the commission, or other standards and rules not inconsistent therewith. Notwithstanding any such election, the commission may consider a public utility's revenues and return on investment in exempt areas in fixing rates and charges in nonexempt areas, and may also exercise the powers conferred necessary to give effect to orders under this Act, for the benefit of nonexempt areas. Likewise, in fixing rates and charges in the exempt area, the governing body may consider a public utility's revenues and return on investment in nonexempt areas. Utilities serving exempt areas shall be subject to the reporting requirements of this Act. Such reports shall be filed with the governing body of the municipality as well as with the commission. Nothing in this section shall limit the duty and power of the commission to regulate service and rates of municipally regulated utilities for service provided to other areas in Texas.

Rate Determination

Sec. 23. Any municipality regulating its public utilities pursuant to this Act shall require from those utilities all necessary data to make a reasonable determination of rate base, expenses, investment, and rate of return within the municipal boundaries. The standards for such determination shall be based on the procedures and requirements of this Act and said municipality shall retain any and all personnel necessary to make the determination of reasonable rates required under this Act.

Ratemaking Proceedings; Engagement of Consultants, Accountants, Auditors, Attorneys and Engineers; Standing

Sec. 24. (a) The governing body of any municipality participating in or conducting ratemaking proceedings shall have the right to select and engage rate consultants, accountants, auditors, attorneys, engineers, or any combination thereof, to conduct investigations, present evidence, advise and represent the governing body, and assist with litigation in public utility ratemaking proceedings before the governing body, any regulatory authority, or in court. The public utility engaged in such proceedings shall be required to reimburse the governing body for the reasonable costs of such services to the extent found reasonable by the applicable regulatory authority.

(b) Municipalities shall have standing in all cases before the commission regarding utilities serving within their corporate limits subject to the right of the commission to determine standing in cases involving retail service area disputes involving two or more utilities and to consolidate municipalities on issues of common interest and shall be entitled to judicial review of orders regarding said proceedings in accordance with Section 69 of the Act.

Assistance of Commission

Sec. 25. The commission may advise and assist municipalities upon request in connection with questions and proceedings arising under this Act. Such

assistance may include aid to municipalities in connection with matters pending before the commission or the courts, or before the governing body of any municipality, including making members of the staff available as witnesses and otherwise providing evidence to them.

Appeal

Sec. 26. (a) Any party to a rate proceeding before the governing body of a municipality may appeal the decision of the governing body to the commission.

(b) Citizens of a municipality may appeal the decision of the governing body in any rate proceeding to the commission through the filing of a petition for review signed by the lesser of 20,000 or 10 percent of the number of qualified voters of such municipality.

(c) Ratepayers of a municipally owned electric utility outside the municipal limits may appeal any action of the governing body affecting the rates of the municipally owned electric utility through filing with the commission petition for review signed by the lesser of 10,000 or 5 percent of the ratepayers served by such utility outside the municipal limits. For purposes of this subsection each person receiving a separate bill shall be considered as a ratepayer. But no person shall be considered as being more than one ratepayer notwithstanding the number of bills received. Such petition for review shall be considered properly signed if signed by any person, or spouse of any such person, in whose name residential utility service is carried.

(d) The appeal process shall be instituted within 30 days of the final decision by the governing body with the filing of a petition for review with the commission and copies served on all parties to the original rate proceeding.

(e) The commission shall hear such appeal de novo based on the test year presented to the municipality and by its final order shall fix such rates as the municipality should have fixed in the ordinance from which the appeal was taken. In the event that the commission fails to enter its final order: (1) for proceedings in which similar relief has also been concurrently sought from the commission under its original jurisdiction, within 120 days from the date such appeal is perfected or the date upon which final action must be taken in the similar proceedings so filed with the commission whichever shall last occur; or (2) in all other proceedings, within 185 days from the date such appeal is perfected, the schedule of rates proposed by the utility shall be deemed to have been approved by the commission and effective upon the expiration of said applicable period. Any rates, whether temporary or permanent, set by the commission shall be prospective and observed from and after the applicable order of the

commission, except interim rate orders necessary to effect uniform system-wide rates.

ARTICLE V. RECORDS, REPORTS, INSPECTIONS, RATES AND SERVICES

Records of Public Utility; Rates, Methods and Accounts

Sec. 27. (a) Every public utility shall keep and render to the regulatory authority in the manner and form prescribed by the commission uniform accounts of all business transacted. The commission may also prescribe forms of books, accounts, records, and memoranda to be kept by such public utilities, including the books, accounts, records, and memoranda of the rendition of and capacity for service as well as the receipts and expenditures of moneys, and any other forms, records, and memoranda which in the judgment of the commission may be necessary to carry out any of the provisions of this Act. In the case of any public utility subject to regulations by a federal regulatory agency, compliance with the system of accounts prescribed for the particular class of utilities by such agency may be deemed a sufficient compliance with the system prescribed by the commission; provided, however, that the commission may prescribe forms of books, accounts, records, and memoranda covering information in addition to that required by the federal agency. The system of accounts and the forms of books, accounts, records, and memoranda prescribed by the commission for a public utility or class of utilities shall not conflict nor be inconsistent with the systems and forms established by a federal agency for that public utility or class of utilities.

(b) The commission shall fix proper and adequate rates and methods of depreciation, amortization, or depletion of the several classes of property of each public utility, and shall require every public utility to carry a proper and adequate depreciation account in accordance with such rates and methods and with such other rules and regulations as the commission prescribes. Such rates, methods, and accounts shall be utilized uniformly and consistently throughout the ratesetting and appeal proceedings.

(c) Every public utility shall keep separate accounts to show all profits or losses resulting from the sale or lease of appliances, fixtures, equipment, or other merchandise. No such profit or loss shall be taken into consideration by the regulatory authority in arriving at any rate to be charged for service by any such public utility, to the extent that such merchandise is not integral to the provision of utility service.

(d) Every public utility is required to keep and render its books, accounts, records, and memoranda accurately and faithfully in the manner and form prescribed by the commission, and to comply with all directions of the regulatory authority relating to such books, accounts, records, and memoranda.

The regulatory authority may require the examination and audit of all accounts.

(e) In determining the allocation of tax savings derived from application of such methods as liberalized depreciation and amortization and the investment tax credit, the regulatory authority shall equitably balance the interests of present and future customers and shall apportion such benefits between consumers and the public utilities accordingly. Where any portion of the investment tax credit has been retained by a public utility, that same amount shall be deducted from the original cost of the facilities or other addition to the rate base to which the credit applied, to the extent allowed by the Internal Revenue Code.

(f) For the purposes of this section, "public utility" includes "municipally owned utility."

Powers of Commission

Sec. 28. (a) The commission shall have the power to:

(1) require that public utilities report to it such information relating to themselves and affiliated interests both within and without the State of Texas as it may consider useful in the administration of this Act;

(2) establish forms for all reports;

(3) determine the time for reports and the frequency with which any reports are to be made;

(4) require that any reports be made under oath;

(5) require that a copy of any contract or arrangement between any public utility and any affiliated interest be filed with it. It may require any such contract or arrangement not in writing to be reduced to writing and filed with it;

(6) require that a copy of any report filed with any federal agency or any governmental agency or body of any other state be filed with it;

(7) require that a copy of annual reports showing all payments of compensation (other than salary or wages subject to the withholding of federal income tax) to residents of Texas, or with respect to legal, administrative, or legislative matters in Texas, or for representation before the Texas Legislature or any governmental agency or body; and

(8) the railroad commission shall have the power to review and approve, for purposes of the Outer Continental Shelf Lands Act Amendments of 1978¹ and any other federal authorities, applications by gas utilities for the purchase of natural gas from producing affiliates.

(b) On the request of the governing body of any municipality, the commission may provide sufficient staff members to advise and consult with such municipality on any pending matter.

¹ Generally, 43 U.S.C.A. §§ 1331 et seq. and 1801 et seq.

Inspections; Examination Under Oath; Compelling Production of Records; Inquiry into Management and Affairs

Sec. 29. (a) Any regulatory authority, and when authorized by the regulatory authority, its counsel, agents, and employees, shall have the right, at reasonable times and for reasonable purposes, to inspect and obtain copies of the papers, books, accounts, documents, and other business records, and to inspect the plant, equipment, and other property of any public utility within its jurisdiction. The regulatory authority may examine under oath, or it may authorize the person conducting such investigation to examine under oath, any officer, agent, or employee of any public utility in connection with such investigation. The regulatory authority may require, by order or subpoena served on any public utility, the production within this state at the time and place it may designate, of any books, accounts, papers, or records kept by that public utility outside the state, or verified copies in lieu thereof if the commission so orders. Any public utility failing or refusing to comply with any such order or subpoena is in violation of this Act.

(b)(1) A member, agent, or employee of the regulatory authority may enter the premises occupied by a public utility to make inspections, examinations, and tests and to exercise any authority provided by this Act.

(2) A member, agent, or employee of the regulatory authority may act under this section only during reasonable hours and after giving reasonable notice to the utility.

(3) The public utility is entitled to be represented when inspections, examinations, and tests are made on its premises. Reasonable time for the utility to secure a representative shall be allowed before commencing an inspection, examination, or test.

(c) The regulatory authority may inquire into the management and affairs of all public utilities, and shall keep itself informed as to the manner and method in which the same are conducted.

Reporting of Advertising or Public Relations Expenses

Sec. 30. The regulatory authority may require an annual reporting from each utility company of all its expenditures for business gifts and entertainment, and institutional, consumption-inducing and other advertising or public relations expenses. The regulatory authority shall not allow as costs or expenses for rate-making purposes any of these expenditures which the regulatory authority determines not to be in the public interest. The cost of legislative-advocacy expenses shall not in any case be allowed as costs or expenses for rate-making purposes. Reasonable charitable or civic contributions may be allowed not to exceed the amount approved by the regulatory authority.

Unlawful Rates, Rules and Regulations

Sec. 31. It shall be unlawful for any utility to charge, collect, or receive any rate for public utility service or to impose any rule or regulation other than as herein provided.

Filing Schedule of Rates, Rules and Regulations

Sec. 32. Every public utility shall file with each regulatory authority schedules showing all rates which are subject to the original or appellate jurisdiction of the regulatory authority and which are in force at the time for any public utility service, product, or commodity offered by the utility. Every public utility shall file with, and as a part of such schedules, all rules and regulations relating to or affecting the rates, public utility service, product, or commodity furnished by such utility.

Office of Public Utility; Records; Removal From State

Sec. 33. Every public utility shall have an office in a county of this state in which its property or some part thereof is located in which it shall keep all books, accounts, records, and memoranda required by the commission to be kept in the state. No books, accounts, records, or memoranda required by the regulatory authority to be kept in the state shall be removed from the state, except on conditions prescribed by the commission.

Communications by Public Utilities With Regulatory Authority; Regulations and Records

Sec. 34. (a) The regulatory authority shall prescribe regulations governing communications by public utilities, their affiliates and their representatives, with the regulatory authority or any member or employee of the regulatory authority.

(b) Such records shall contain the name of the person contacting the regulatory authority or member or employee of the regulatory authority, the name of the business entities represented, a brief description of the subject matter of the communication, and the action, if any, requested by the public utility, affiliate, or representative. These records shall be available to the public on a monthly basis.

Standards of Service

Sec. 35. (a) Every public utility shall furnish such service, instrumentalities, and facilities as shall be safe, adequate, efficient, and reasonable.

(b) The regulatory authority after reasonable notice and hearing had on its own motion or on complaint, may ascertain and fix just and reasonable standards, classifications, regulations, or practices to be observed and followed by any or all public utilities with respect to the service to be furnished; ascertain and fix adequate and reasonable standards for the measurement of the quantity, quality, pressure, initial voltage, or other condition pertaining to the supply of the service; prescribe reasona-

ble regulations for the examination and testing of the service and for the measurement thereof; and establish or approve reasonable rules, regulations, specifications, and standards to secure the accuracy of all meters, instruments and equipment used for the measurement of any service of any public utility. Any standards, classifications, regulations, or practices now or hereafter observed or followed by any public utility may be filed by it with the regulatory authority, and the same shall continue in force until amended by the public utility or until changed by the regulatory authority as herein provided.

Examination and Test of Equipment

Sec. 36. (a) The regulatory authority may examine and test any meter, instrument, or equipment used for the measurement of any service of any public utility and may enter any premises occupied by any public utility for the purpose of making such examinations and tests and exercising any power provided for in this Act and may set up and use on such premises any apparatus and appliances necessary therefor. The public utility shall have the right to be represented at the making of the examinations, tests, and inspections. The public utility and its officers and employees shall facilitate the examinations, tests, and inspections by giving every reasonable aid to the regulatory authority and any person or persons designated by the regulatory authority for the duties aforesaid.

(b) Any consumer or user may have any meter or measuring device tested by the utility once without charge, after a reasonable period to be fixed by the regulatory authority by rule, and at shorter intervals on payment of reasonable fees fixed by the regulatory authority. The regulatory authority shall declare and establish reasonable fees to be paid for other examining and testing such meters and other measuring devices on the request of the consumer. If the test is requested to be made within the period of presumed accuracy as fixed by the regulatory authority since the last such test of the same meter or other measuring device, the fee to be paid by the consumer or user at the time of his request shall be refunded to the consumer or user if the meter or measuring device is found unreasonably defective or incorrect to the substantial disadvantage of the consumer or user. If the consumer's request is made at a time beyond the period of presumed accuracy fixed by the regulatory authority since the last such test of the same meter or measuring device, the utility shall make the test without charge to the consumer or user.

ARTICLE VI. PROCEEDINGS BEFORE THE REGULATORY AUTHORITY

Power to Insure Compliance; Rate Regulation

Sec. 37. Subject to the provisions of this Act, the commission is hereby vested with all authority

and power of the State of Texas to insure compliance with the obligations of public utilities in this Act. For this purpose the regulatory authority is empowered to fix and regulate rates of public utilities, including rules and regulations for determining the classification of customers and services and for determining the applicability of rates. No rule or order of the regulatory authority shall be in conflict with the rulings of any federal regulatory body.

Just and Reasonable Rates

Sec. 38. It shall be the duty of the regulatory authority to insure that every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable. Rates shall not be unreasonably preferential, prejudicial, or discriminatory, but shall be sufficient, equitable, and consistent in application to each class of consumers. For ratemaking purposes, the commission may treat two or more municipalities served by a public utility as a single class wherever it deems such treatment to be appropriate.

Fixing Overall Revenues

Sec. 39. (a) In fixing the rates of a public utility the regulatory authority shall fix its overall revenues at a level which will permit such utility a reasonable opportunity to earn a reasonable return on its invested capital used and useful in rendering service to the public over and above its reasonable and necessary operating expenses.

(b) In fixing a reasonable return on invested capital, the regulatory authority shall consider, in addition to other applicable factors, efforts to comply with the statewide energy plan, the efforts and achievements of such utility in the conservation of resources, the quality of the utility's services, the efficiency of the utility's operations, and the quality of the utility's management.

Burden of Proof

Sec. 40. In any proceeding involving any proposed change of rates, the burden of proof to show that the proposed change, if proposed by the utility, or that the existing rate, if it is proposed to reduce the rate, is just and reasonable shall be on the public utility.

Components of Invested Capital and Net Income

Sec. 41. The components of invested capital and net income shall be determined according to the following rules:

(a) **Invested Capital.** Utility rates shall be based upon the original cost of property used by and useful to the public utility in providing service including construction work in progress at cost as recorded on the books of the utility. The inclusion of construction work in progress is an exceptional form of rate relief to be granted only upon the

demonstration by the utility that such inclusion is necessary to the financial integrity of the utility. Construction work in progress shall not be included in the rate base for major projects under construction to the extent that such projects have been inefficiently or imprudently planned or managed. Original cost shall be the actual money cost, or the actual money value of any consideration paid other than money, of the property at the time it shall have been dedicated to public use, whether by the utility which is the present owner or by a predecessor, less depreciation.

(b) **Separations and Allocations.** Costs of facilities, revenues, expenses, taxes, and reserves shall be separated or allocated as prescribed by the regulatory authority.

(c) **Net Income.** By "net income" is meant the total revenues of the public utility less all reasonable and necessary expenses as determined by the regulatory authority. The regulatory authority shall determine expenses and revenues in a manner consistent with the following:

(1) **Transactions with Affiliated Interests.** Payment to affiliated interests for costs of any services, or any property, right or thing, or for interest expense shall not be allowed either as capital cost or as expense except to the extent that the regulatory authority shall find such payment to be reasonable and necessary for each item or class of items as determined by the commission. Any such finding shall include specific findings of the reasonableness and necessity of each item or class of items allowed and a finding that the price to the utility is no higher than prices charged by the supplying affiliate to its other affiliates or divisions for the same item or class of items, or to unaffiliated persons or corporations. The price paid by gas utilities to affiliated interests for natural gas from Outer Continental Shelf lands shall be subject to a rebuttable presumption that such price is reasonable if the price paid does not exceed the price permitted by federal regulation if such gas is regulated by any federal agency or if not regulated by a federal agency does not exceed the price paid by nonaffiliated parties for natural gas from Outer Continental Shelf lands. The burden of establishing that such a price paid is not reasonable shall be on any party challenging the reasonableness of such price.

(2) **Income Taxes.** If the public utility is a member of an affiliated group that is eligible to file a consolidated income tax return, and if it is advantageous to the public utility to do so, income taxes shall be computed as though a consolidated return had been so filed and the utility had realized its fair share of the savings resulting from the consolidated return, unless it is shown to the satisfaction of the regulatory authority that it was reasonable to choose not to consolidate returns. The amounts of income taxes saved by a consolidated group of

which a public utility is a member by reason of the elimination in the consolidated return of the inter-company profit on purchases by the public utility from an affiliate shall be applied to reduce the cost of the property or services so purchased. The investment tax credit allowed against federal income taxes, to the extent retained by the utility, shall be applied as a reduction in the rate based contribution of the assets to which such credit applies, to the extent and at such rate as allowed by the Internal Revenue Code.

(3) Expenses Disallowed. The regulatory authority shall not consider for ratemaking purposes the following expenses:

(A) legislative advocacy expenses, whether made directly or indirectly, including but not limited to legislative advocacy expenses included in trade association dues;

(B) payments, except those made under an insurance or risk-sharing arrangement executed before the date of loss, made to cover costs of an accident, equipment failure, or negligence at a utility facility owned by a person or governmental body not selling power inside the State of Texas;

(C) Costs of processing a refund or credit under Subsection (e) of Section 43 of this Act; or

(D) any expenditure found by the regulatory authority to be unreasonable, unnecessary, or not in the public interest, including but not limited to executive salaries, advertising expenses, legal expenses, and civil penalties or fines.

The regulatory authority may promulgate reasonable rules and regulations with respect to the allowance or disallowance of any expenses for ratemaking purposes.

**Unreasonable or Violative Existing Rates;
Investigating Costs of Obtaining Service
From Another Source**

Sec. 42. Whenever the regulatory authority, after reasonable notice and hearing, on its own motion or on complaint by any affected person, finds that the existing rates of any public utility for any service are unreasonable or in any way in violation of any provision of law, the regulatory authority shall determine the just and reasonable rates, including maximum or minimum rates, to be thereafter observed and in force, and shall fix the same by order to be served on the public utility; and such rates shall constitute the legal rates of the public utility until changed as provided in this Act. Whenever a public utility does not itself produce or generate that which it distributes, transmits, or furnishes to the public for compensation, but obtains the same from another source, the regulatory authority shall have the power and authority to investigate the cost of such production or generation in any investiga-

tion of the reasonableness of the rates of such public utility.

**Statement of Intent to Change Rates; Major Changes;
Hearing; Suspension of Rate Schedule;
Determination of Rate Level**

Sec. 43. (a) No utility may make changes in its rates except by filing a statement of intent with the regulatory authority having original jurisdiction at least 35 days prior to the effective date of the proposed change. The statement of intent shall include proposed revisions of tariffs and schedules and a statement specifying in detail each proposed change, the effect the proposed change is expected to have on the revenues of the company, the classes and numbers of utility consumers affected, and such other information as may be required by the regulatory authority's rules and regulations. A copy of the statement of intent shall be mailed or delivered to the appropriate officer of each affected municipality, and notice shall be given by publication in conspicuous form and place of a notice to the public of such proposed change once in each week for four successive weeks prior to the effective date of the proposed change in a newspaper having general circulation in each county containing territory affected by the proposed change, and by mail to such other affected persons as may be required by the regulatory authority's rules and regulations. Provided, however, nothing in this subsection shall apply to a water or sewer utility that:

(1) has fewer than 150 customers; and

(2) is not a member of a group filing a consolidated tax return; and

(3) is not under common control or ownership with another water or sewer utility.

(b) The regulatory authority, for good cause shown, may, except in the case of major changes, allow changes in rate to take effect prior to the end of such 35 day period under such conditions as it may prescribe, subject to suspension as provided herein. All such changes shall be indicated immediately upon its schedules by such utility. "Major changes" shall mean an increase in rates which would increase the aggregate revenues of the applicant more than the greater of \$100,000 or two and one-half percent, but shall not include changes in rates allowed to go into effect by the regulatory authority or made by the utility pursuant to an order of the regulatory authority after hearings held upon notice to the public.

(c) Whenever there is filed with the Regulatory Authority any schedule modifying or resulting in a change in any rates than in force, the Regulatory Authority shall on complaint by any affected person or may on its own motion, at any time within 30 days from the date when such change would or has become effective, and, if it so orders, without answer or other formal pleading by the utility, but on

reasonable notice, including notice to the governing bodies of all affected municipalities and counties, enter on a hearing to determine the propriety of such change. The Regulatory Authority shall hold such a hearing in every case in which the change constitutes a major change in rates, provided that an informal proceeding may satisfy this requirement if no complaint has been received before the expiration of 45 days after notice of the change shall have been filed. In each case where the commission determines it is in the public interest to collect testimony at a regional hearing for the inclusion in the record, the commission shall hold a regional hearing at an appropriate location. A regional hearing is not required in a case involving a water, sewer, or member-owned utility, unless the commission determines otherwise.

(d) Pending the hearing and decision, the local Regulatory Authority, after delivery to the affected utility of a statement in writing of its reasons therefor, may suspend the operation of the schedule for a period not to exceed 90 days beyond the date on which the schedule of rates would otherwise go into effect and the commission may suspend the operation of the schedule for a period not to exceed 150 days beyond the date on which the schedule would otherwise go into effect. If the Regulatory Authority does not make a final determination concerning any schedule of rates prior to expiration of the period or periods of suspension, the schedule shall be deemed to have been approved by the Regulatory Authority. However, the 150-day period shall be extended two days for each one day of actual hearing on the merits of the case that exceeds 15 days. This approval is subject to the authority of the Regulatory Authority thereafter to continue a hearing in progress. The Regulatory Authority may in its discretion fix temporary rates for any period of suspension under this section. During the suspension by the Regulatory Authority as above provided, the rates in force when the suspended schedule was filed shall continue in force unless the Regulatory Authority shall establish a temporary rate. The Regulatory Authority shall give preference to the hearing and decision of questions arising under this section over all other questions pending before it and decide the same as speedily as possible.

(e) If the 150-day period has been extended, as provided for in Subsection (d) of Section 43 of this Act, and the commission fails to make its final determination of rates within 150 days from the date that the proposed change otherwise would have gone into effect, the utility concerned may put a changed rate, not to exceed the proposed rate, into effect upon the filing with the regulatory authority of a bond payable to the regulatory authority in an amount and with sureties approved by the regulatory authority conditioned upon refund and in a form approved by the regulatory authority. The

utility concerned shall refund or credit against future bills all sums collected during the period of suspension in excess of the rate finally ordered plus interest at the current rate as finally determined by the regulatory authority.

(f) If, after hearing, the Regulatory Authority finds the rates to be unreasonable or in any way in violation of any provision of law, the Regulatory Authority shall determine the level of rates to be charged or applied by the utility for the service in question and shall fix the same by order to be served upon the utility; these rates are thereafter to be observed until changed, as provided by this Act.

(g)(1) A rate or tariff set by the commission shall not authorize a utility to automatically adjust and pass through to its customers changes in fuel or other costs of the utility.

(2)(A) Any revision of a utility's billings to its customers to allow for the recovery of additional fuel costs may be made only upon a public hearing and order of the commission.

(B) The commission may consider any evidence that is appropriate and in the public interest at such hearing.

(C) A proceeding under this subsection shall not be considered a rate case under Section 43 of this Act.

(3) The commission may, after a hearing, grant interim relief for fuel cost increases that are the result of unusual and emergency circumstances or conditions.

(4)(A) This subsection applies only to increases or decreases in the cost of purchased electricity which have been:

- (i) accepted by a federal regulatory authority; or
- (ii) approved after a hearing by the Public Utility Commission of Texas.

(B) The Public Utility Commission of Texas may utilize any appropriate method to provide for the adjustment of the cost of purchased electricity upon such terms and conditions as the commission may determine. Such purchased electricity costs may be recovered concurrently with the effective date of the changed costs to the purchasing utility or as soon thereafter as is reasonably practical.

(h) A water or sewer utility exempted in Subsection (a) of this section may change its rates by filing a statement of change with the commission at least 30 days after providing notice of the change to its customers. The changed rates may be put into effect on the filing of the statement of change. At the request of one-tenth of the customers of the utility within 60 days after the day the rates are put into effect, the commission may hold a hearing, which may be an informal proceeding. On a finding

by the commission that the changed rates are not just and reasonable, the commission shall set the utility's rates according to its usual procedure. The utility shall refund or credit against future bills all sums collected since the filing of the statement of change in excess of the rate finally set plus interest at the current rate as finally determined by the commission. No filing for a rate change under this section may be made for a period of six months from the last such filing by the same utility.

Rates for Areas Not Within Municipality

Sec. 44. Public utility rates for areas not within any municipality shall not exceed without commission approval 115 percent of the average of all rates for similar services of all municipalities served by the same utility within the same county.

Unreasonable Preference or Prejudice as to Rates or Services

Sec. 45. No public utility may, as to rates or services, make or grant any unreasonable preference or advantage to any corporation or person within any classification, or subject any corporation or person within any classification to any unreasonable prejudice or disadvantage. No public utility may establish and maintain any unreasonable differences as to rates of service either as between localities or as between classes of service.

Equality of Rates and Services

Sec. 46. No public utility may, directly or indirectly, by any device whatsoever or in any manner, charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered by the utility than that prescribed in the schedule of rates of the public utility applicable thereto when filed in the manner provided in this Act, nor may any person knowingly receive or accept any service from a public utility for a compensation greater or less than that prescribed in the schedules, provided that all rates being charged and collected by a public utility upon the effective date of this Act may be continued until schedules are filed. Nothing in this Act shall prevent a cooperative corporation from returning to its members the whole, or any part of, the net earnings resulting from its operations in proportion to their purchases from or through the corporation.

Discrimination; Restriction on Competition

Sec. 47. No public utility may discriminate against any person or corporation that sells or leases equipment or performs services in competition with the public utility, nor may any public utility engage in any other practice that tends to restrict or impair such competition.

Payments in Lieu of Taxes

Sec. 48. No payments made in lieu of taxes by a public utility to the municipality by which it is owned may be considered an expense of operation for the purpose of determining, fixing, or regulating the rates to be charged for the provision of utility service to a school district or hospital district. No rates received by a public utility from a school district or hospital district may be used to make or to cover the cost of making payments in lieu of taxes to the municipality by which the public utility is owned.

ARTICLE VII. CERTIFICATES OF CONVENIENCE AND NECESSITY

Definitions

Sec. 49. For the purposes of this article only: (a) "Retail public utility" means any person, corporation, water supply or sewer service corporation, municipality, political subdivision or agency, or cooperative corporation, now or hereafter operating, maintaining, or controlling in Texas facilities for providing retail utility service.

(b) For the purposes of this article only, "public utility" includes a water supply or sewer service corporation.

Certificate Required

Sec. 50. Beginning one year after the effective date of this Act, unless otherwise specified:

(1) No public utility may in any way render service directly or indirectly to the public under any franchise or permit without first having obtained from the commission a certificate that the present or future public convenience and necessity require or will require such installation, operation, or extension.

(2) Except as otherwise provided in this article no retail public utility may furnish, make available, render, or extend retail public utility service to any area to which retail utility service is being lawfully furnished by another retail public utility on or after the effective date of this Act, without first having obtained a certificate of public convenience and necessity that includes the area in which the consuming facility is located.

Exceptions for Extension of Service

Sec. 51. (a) A public utility is not required to secure a certificate of public convenience and necessity for:

(1) an extension into territory contiguous to that already served by it and not receiving similar service from another public utility and not within the area of public convenience and necessity of another utility of the same kind;

(2) an extension within or to territory already served by it or to be served by it under a certificate of public convenience and necessity; or

(3) operation, extension, or service in progress on the effective date of this Act.

(b) Any extensions allowed by Subsection (a) of this section shall be limited to devices for interconnection of existing facilities or devices used solely for transmitting public utility services from existing facilities to customers of retail utility service.

Application; Maps; Evidence of Consent

Sec. 52. (a) A public utility shall submit to the commission an application to obtain a certificate of public convenience and necessity or an amendment thereof.

(b) On or before 90 days after the effective date of this Act, or at a later date on request in writing by a public utility when good cause is shown, or at such later dates as the commission may order, each public utility shall file with the commission a map or maps showing all its facilities and illustrating separately facilities for generation, transmission, and distribution of its services.

(c) Each applicant for a certificate shall file with the commission such evidence as is required by the commission to show that the applicant has received the required consent, franchise, or permit of the proper municipality or other public authority.

Prior Construction or Operation

Sec. 53. On application made to the commission within six months after the effective date of this Act, the commission shall issue a certificate of public convenience and necessity for the construction or operation then being conducted to any public utility actually providing service to any geographical area on the effective date of this Act, or to any person or corporation actively engaged on the effective date of this Act in the construction, installation, extension, or improvement of, or addition to, any facility or system used or to be used in providing public utility service.

Notice and Hearing; Issuance or Refusal; Factors Considered; Filing of Notice of Intent by Electric Utilities

Sec. 54. (a) When an application for a certificate of public convenience and necessity is filed, the commission shall give notice of such application to interested parties and, if requested, shall fix a time and place for a hearing and give notice of the hearing. Any person interested in the application may intervene at the hearing.

(b) Except for certificates for prior operations granted under Section 53, the commission may grant applications and issue certificates only if the commission finds that the certificate is necessary

for the service, accommodation, convenience, or safety of the public. The commission may issue the certificate as prayed for, or refuse to issue it, or issue it for the construction of a portion only of the contemplated system or facility or extension thereof, or for the partial exercise only of the right or privilege.

(c) Certificates of convenience and necessity shall be granted on a nondiscriminatory basis after consideration by the commission of the adequacy of existing service, the need for additional service, the effect of the granting of a certificate on the recipient of the certificate and on any public utility of the same kind already serving the proximate area, and on such factors as community values, recreational and park areas, historical and aesthetic values, environmental integrity, and the probable improvement of service or lowering of cost to consumers in such area resulting from the granting of such certificate.

(d) In addition to the requirements of this section, an electric utility applying for certificate of convenience and necessity for a new generating plant must first file a notice of intent to file an application for certification.

(1) The notice of intent shall set out alternative methods considered to help meet the electrical needs, related electrical facilities, and the advantages and disadvantages of the alternatives. In addition, the notice shall indicate compatibility with the most recent long-term forecast provided in this Act.

(2) The commission shall conduct a hearing on the notice of intent to determine the appropriateness of the proposed generating plant as compared to the alternatives and shall issue a report on its findings. In conjunction with the issuance of the report, the commission shall render a decision approving or disapproving the notice. Such decision shall be rendered within 180 days from the date of filing the notice of intent.

(e) On approval of the notice of intent, a utility may apply for certification for a generating plant, site, and site facilities no later than 12 months before construction is to commence.

(1) The application for certification shall contain such information as the commission may require to justify the proposed generating plant, site, and site facilities and to allow a determination showing compatibility with the most recent forecast.

(2) Certificates of convenience and necessity shall be granted on a nondiscriminatory basis if the commission finds that the proposed new plant is required under the service area forecast, that it is the best and most economical choice of technology for that service area as compatible with the commission's forecast, and that conservation and alternative energy sources cannot meet the need.

Area Included Within City, Town or Village

Sec. 55. (a) If an area has been or shall be included within the boundaries of a city, town, or village as the result of annexation, incorporation, or otherwise, all public utilities certified or entitled to certification under this Act to provide service or operate facilities in such area prior to the inclusion shall have the right to continue and extend service in its area of public convenience and necessity within the annexed or incorporated area, pursuant to the rights granted by its certificate and this Act.

(b) Notwithstanding any other provision of law, a public utility shall have the right to continue and extend service within its area of public convenience and necessity and to utilize the roads, streets, highways, alleys, and public property for the purpose of furnishing such retail utility service, subject to the authority of the governing body of a municipality to require any public utility, at its own expense, to relocate its facilities to permit the widening or straightening of streets by giving to the public utility 30 days' notice and specifying the new location for the facilities along the right-of-way of the street or streets.

(c) This section may not be construed as limiting the power of cities, towns, and villages to incorporate or extend their boundaries by annexation, nor may this section be construed as prohibiting any city or town from levying taxes and other special charges for the use of the streets as are authorized by Section 182.025, Tax Code.

(d) Where a municipal corporation offers retail electric utility service in a city of more than 135,000 population located in a county of more than 1,500,000 population according to the last federal decennial census, the commission shall singly certificate areas within the corporate limits of such municipality where more than one electric utility provides electric utility service within such corporate limits. In singly certificating such areas, the commission shall preserve the respective electric utilities' rights to serve the customers such electric utilities are serving on the effective date of this subsection. Provided, however, the foregoing shall not apply to customers served, at least partially, by a nominal 69,000 volts system, who have given notice of termination to the utility servicing that customer prior to the effective date of this subsection.

Contracts Valid and Enforceable

Sec. 56. Contracts between retail public utilities designating areas to be served and customers to be served by those utilities, when approved by the commission, shall be valid and enforceable and shall be incorporated into the appropriate areas of public convenience and necessity.

Preliminary Order for Certificate

Sec. 57. If a public utility desires to exercise a right or privilege under a franchise or permit which it contemplates securing but which has not as yet been granted to it, such public utility may apply to the commission for an order preliminary to the issuance of the certificate. The commission may thereupon make an order declaring that it will, on application, under such rules as it prescribes, issue the desired certificate on such terms and conditions as it designates, after the public utility has obtained the contemplated franchise or permit. On presentation to the commission of evidence satisfactory to it that the franchise or permit has been secured by the public utility, the commission shall issue the certificate.

Continuous and Adequate Service; Discontinuance, Reduction or Impairment of Service

Sec. 58. (a) The holder of any certificate of public convenience and necessity shall serve every consumer within its certified area and shall render continuous and adequate service within the area or areas.

(b) Unless the commission issues a certificate that neither the present or future convenience and necessity will be adversely affected, the holder of a certificate shall not discontinue, reduce, or impair service to a certified service area or part thereof except for:

- (1) nonpayment of charges;
- (2) nonuse; or

(3) other similar reasons in the usual course of business.

(c) Any discontinuance, reduction, or impairment of service, whether with or without approval of the commission, shall be in conformity with and subject to such conditions, restrictions, and limitations as the commission shall prescribe.

Sale, Assignment or Lease of Certificate

Sec. 59. If the commission determines that a purchaser, assignee, or lessee is capable of rendering adequate service, a public utility may sell, assign, or lease a certificate of public convenience and necessity or any rights obtained under the certificate. The sale, assignment, or lease shall be on the conditions prescribed by the commission.

Interference with Other Public Utility

Sec. 60. If a public utility in constructing or extending its lines, plant, or system interferes or attempts to interfere with the operation of a line, plant, or system of any other public utility, the commission may issue an order prohibiting the construction or extension or prescribing terms and conditions for locating the lines, plants, or systems affected.

**Improvements in Service; Interconnecting Service;
Extended Area Toll-free Telephone Service**

Sec. 61. After notice and hearing, the commission may:

(1) order a public utility to provide specified improvements in its service in a defined area, if service in such area is inadequate or is substantially inferior to service in a comparable area and it is reasonable to require the company to provide such improved service;

(2) order two or more public utilities to establish specified facilities for the interconnecting service; and

(3) order a telephone company or telephone companies to provide extended area toll-free service within a specified metropolitan area where there is a sufficient community of interest within the area and such service can reasonably be provided.

Revocation or Amendment of Certificate

Sec. 62. (a) The commission at any time after notice and hearing may revoke or amend any certificate of convenience and necessity if it finds that the certificate holder has never provided or is no longer providing service in the area, or part of the area, covered by the certificate.

(b) When the certificate of any public utility is revoked or amended, the commission may require one or more public utilities to provide service in the area in question.

**ARTICLE VIII. SALE OF PROPERTY
AND MERGERS**

**Report of Sale, Merger, etc.; Investigation;
Disallowance of Transaction**

Sec. 63. No public utility may sell, acquire, lease, or rent any plant as an operating unit or system in this state for a total consideration in excess of \$100,000 or merge or consolidate with another public utility operating in this state unless the public utility reports such transaction to the commission within a reasonable time. All transactions involving the sale of 50 percent or more of the stock of a public utility shall also be reported to the commission within a reasonable time. On the filing of a report with the commission, the commission shall investigate the same with or without public hearing, to determine whether the action is consistent with the public interest. In reaching its determination, the commission shall take into consideration the reasonable value of the property, facilities, or securities to be acquired, disposed of, merged or consolidated. If the commission finds that such transactions are not in the public interest, the commission shall take the effect of the transaction into consideration in the rate-making proceedings and disallow the effect of such transaction if it will unreasonably affect rates or service. The provi-

sions of this section shall not be construed as being applicable to the purchase of units of property for replacement or to the addition to the facilities of the public utility by construction.

**Purchase of Voting Stock in Another Public
Utility: Report**

Sec. 64. No public utility may purchase voting stock in another public utility doing business in Texas, unless the utility reports such purchase to the commission.

Loans to Stockholders: Report

Sec. 65. No public utility may loan money, stocks, bonds, notes, or other evidences of indebtedness to any corporation or person owning or holding directly or indirectly any stock of the public utility unless the public utility reports the transaction to the commission within a reasonable time.

Sec. 66. Repealed by Acts 1983, 68th Leg., p. 1222, ch. 263, § 25, eff. Sept. 1, 1983.

**ARTICLE IX. RELATIONS WITH
AFFILIATED INTERESTS**

Jurisdiction Over Affiliated Interests

Sec. 67. The commission shall have jurisdiction over affiliated interests having transactions with public utilities under the jurisdiction of the commission to the extent of access to all accounts and records of such affiliated interests relating to such transactions, including but in no way limited to accounts and records of joint or general expenses, any portion of which may be applicable to such transactions.

Disclosure of Substantial Interest in Voting Securities

Sec. 68. The commission may require the disclosure of the identity and respective interests of every owner of any substantial interest in the voting securities of any public utility or its affiliated interest. One percent or more is a substantial interest within the meaning of this section.

ARTICLE X. JUDICIAL REVIEW

**Right to Judicial Review; Evidence; Commission
as Party Defendant**

Sec. 69. Any party to a proceeding before the commission is entitled to judicial review under the substantial evidence rule. The commission shall be a party defendant in any such proceeding represented by the attorney general.

Costs and Attorney's Fees

Sec. 70. Any party represented by counsel who alleges that existing rates are excessive or that those prescribed by the commission are excessive, and who is a prevailing party in proceedings for review of a commission order or decision, may in the

same action recover against the regulation fund reasonable fees for attorneys and expert witnesses and other costs for its efforts before the commission and the court, the amount of such attorneys' fees to be fixed by the court. On a finding by the court that an action under this article was groundless and brought in bad faith and for the purpose of harassment, the court may award to the defendant public utility the reasonable attorneys' fees.

ARTICLE XI. VIOLATIONS AND ENFORCEMENT

Action to Enjoin or Require Compliance

Sec. 71. Whenever it appears to the commission that any public utility or any other person or corporation is engaged in, or is about to engage in, any act in violation of this Act or of any order, rule, or regulation of the commission entered or adopted under the provisions of this Act, or that any public utility or any other person or corporation is failing to comply with the provisions of this Act or with any such rule, regulation, or order, the attorney general on request of the commission, in addition to any other remedies provided herein, shall bring an action in a court of competent jurisdiction in the name of and on behalf of the commission against such public utility or other person or corporation to enjoin the commencement or continuation of any such act, or to require compliance with such Act, rule, regulation, or order.

Receivership

Sec. 71A. (a) At the request of the commission, the attorney general shall bring suit for the appointment of a receiver to collect the assets and carry on the business of a water or sewer utility that violates a final order of the commission or allows any property owned or controlled by it to be used in violation of a final order of the commission.

(b) The court shall appoint a receiver if such appointment is necessary to guarantee the collection of assessments, fees, penalties, or interest, to guarantee continued service to the customers of the utility, or to prevent continued or repeated violation of the final order.

(c) The receiver shall execute a bond to assure the proper performance of the receiver's duties in an amount to be set by the court.

(d) After appointment and execution of bond the receiver shall take possession of the assets of the utility specified by the court. Until discharged by the court, the receiver shall perform the duties that the court directs to preserve the assets and carry on the business of the utility and shall strictly observe the final order involved.

(e) Upon a showing of good cause by the utility, the court may dissolve the receivership and order

the assets and control of the business returned to the utility.

Payment of Costs of Receivership

Sec. 71B. The receiver may, subject to the approval of the court and after giving notice to all interested parties, sell or otherwise dispose of real or personal property, or any part thereof, of a water or sewer utility against which a proceeding has been brought under this article for the purpose of paying for the costs incurred in the operation of the receivership. Said costs shall include but are not limited to the payment of fees to the receiver for his services; payment of fees to attorneys, accountants, engineers, or any other person or entity which provides goods or services necessary to the operation of the receivership; payment of costs incurred in ensuring any property owned or controlled by a water or sewer utility is not used in violation of a final order of the commission.

Penalty Against Public Utility or Affiliated Interest

Sec. 72. (a) Any public utility, water supply or sewer service corporation, or affiliated interest that knowingly violates a provision of this Act, fails to perform a duty imposed on it, or fails, neglects, or refuses to obey an order, rule, regulation, direction, or requirement of the commission or decree or judgment of a court, shall be subject to a civil penalty of not less than \$1,000 nor more than \$5,000 for each offense.

(b) A public utility, water supply or sewer service corporation, or affiliated interest commits a separate offense each day it continues to violate the provisions of Subsection (a) of this section.

(c) The attorney general shall institute suit on his own initiative or at the request of, in the name of, and on behalf of the commission, in a court of competent jurisdiction to recover the penalty under this section.

Penalty for Violating Section 6 of This Act

Sec. 73. (a) Any member of the commission, or any officer or director of a public utility or affiliated interest, shall be subject to a civil penalty of \$1,000 for each and every knowing violation of Section 6 of this Act, such penalty to be recovered in a suit filed in a court of competent jurisdiction by the attorney general on his own initiative or at the request of, in the name of, and on behalf of, the commission.

(b) Any person, other than an officer or director of a public utility or affiliated interest or a member of the commission, shall be subject to a civil penalty of \$500 for each and every knowing violation of Section 6 of this Act, such penalty to be recovered in a suit filed in a court of competent jurisdiction by the attorney general on his own initiative or at the request of, in the name of, and on behalf of the commission.

(c) Any member, officer, or employee of the commission found in any action by a preponderance of the evidence to have violated any provision of Section 6 of this Act shall be removed from his office or employment.

Civil Penalty for Violations Resulting in Pollution

Sec. 73A. (a) If a public utility or any other person or corporation under the jurisdiction of the railroad commission pursuant to this Act violates this Act 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 or any other person may be assessed a civil penalty by the railroad commission.

(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, person's, or corporation's history of previous violations of this Act, the seriousness of the violation, any hazard to the health or safety of the public, and the demonstrated good faith of the permittee or public utility, person, or corporation charged.

(d) A civil penalty may be assessed only after the public utility, person, or corporation charged with a violation described under Subsection (a) of this section 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 Act.

(g) If the public utility, person, or corporation charged with the violation fails to avail itself 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 has occurred, the railroad commission shall inform the public utility, person, or corporation 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, person, or corporation charged with the penalty shall:

(1) pay the penalty in full; or

(2) if the public utility, person, or corporation 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, person, or corporation, 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, person, or corporation, 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, person, or corporation 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 railroad commission within the time provided by Subsection (j) of this section results in a waiver of all legal rights to contest the violation or the amount of the penalty.

(m) Civil penalties owed under this section may be recovered in a civil action brought by the attorney general at the request of the railroad 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).

Personal Penalty

Sec. 74. (a) Any person or persons who willfully and knowingly violate the provisions of this Act shall be guilty of a third degree felony.

(b) All penalties accruing under this Act shall be cumulative and a suit for the recovery of any penalty shall not be a bar to or affect the recovery of any other penalty, or be a bar to any criminal prosecution against any public utility or any officer, director, agent, or employee thereof or any other corporation or person.

Contempt Proceedings

Sec. 75. If any person fails to comply with any lawful order of the commission or with any subpoena or subpoena duces tecum or if any witness refuses to testify about any matter on which he may be lawfully interrogated, the commission may apply to any court of competent jurisdiction to compel obedience by proceedings for contempt.

Disposition of Fines and Penalties

Sec. 76. Fines and penalties collected under this Act in other than criminal proceedings shall be paid to the commission and paid by the commission to the state treasury to be placed in the general revenue fund.

Venue

Sec. 77. Suits for injunction or penalties under the provisions of this Act may be brought in Travis County, in any county where such violation is alleged to have occurred, or in the county or residence of any defendant.

ARTICLE XII. COMMISSION FINANCING**Assessments Upon Public Utilities**

Sec. 78. An assessment is hereby imposed upon each public utility within the commission's jurisdiction serving the ultimate consumer equal to one-sixth of one percent of its gross receipts from rates charged the ultimate consumers in Texas for the purpose of defraying the costs and expenses incurred in the administration of this Act. Thereafter the commission shall, subject to the approval of the Legislature, adjust this assessment to provide a level of income sufficient to fund the commission and the office of public utility counsel.

Payment Dates; Delinquency

Sec. 79. All assessments shall be due on August 15 of each year. Any public utility may instead make quarterly payments due on August 15, November 15, February 15, and May 15 of each year. There shall be assessed as a penalty an additional fee of 10 percent of the amount due for any late payment. Fees delinquent for more than 30 days

shall draw interest at the rate of 10 percent per annum on the assessment and penalty due.

Collection and Payment into General Revenue Fund

Sec. 80. All fees, penalties, and interest paid under the provisions of Sections 78 and 79 of this article shall be collected by the comptroller of public accounts and paid into the general revenue fund. The commission shall notify the comptroller of public accounts of any adjustment of the assessment imposed in Section 78 when made.

Approval of Budget

Sec. 81. The budget of the commission shall be subject to legislative approval as part of the appropriations act.

Accounting Records; Audit

Sec. 82. The commission shall keep such accounting records as required by the state auditor. The state auditor shall audit the financial transactions of the commission during each fiscal year.

ARTICLE XIII. MISCELLANEOUS PROVISIONS**Complaint by Any Affected Person**

Sec. 83. (a) Any affected person may complain to the regulatory authority in writing setting forth any act or thing done or omitted to be done by any public utility in violation or claimed violation of any law which the regulatory authority has jurisdiction to administer, or of any order, ordinance, rule, or regulation of the regulatory authority. The commission shall keep an information file about each complaint filed with the commission relating to a utility. The commission shall retain the file for a reasonable period.

(b) If a written complaint is filed with the commission relating to a utility, 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.

Record of Proceedings; Right to Hearing

Sec. 84. A record shall be kept of all proceedings had before the regulatory authority, and all the parties shall be entitled to be heard in person or by attorney.

Judicial Stay or Suspension of Order, Ruling or Decision.

Sec. 85. During the pendency of an appeal, the district court, the court of civil appeals, or the supreme court, as the case may be, may stay or suspend, in whole or in part, the operation of the regulatory authority order, ruling, or decision and such courts in granting or refusing a stay or sus-

pension shall act in accordance with the practice of courts exercising equity jurisdiction.

Sec. 86. [Blank]

Assumption of Jurisdiction

Sec. 87. (a) The regulatory authority shall assume jurisdiction and all powers and duties of regulation under this Act on January 1, 1976, except as provided in Subsection (b) of this section.

(b) The regulatory authority shall assume jurisdiction over rates and service of public utilities on September 1, 1976.

Certain Water and Sewer Utility Property Included in Rate Base; Valuation Used; Depreciation Expense

Sec. 87A. (a) The provisions of this section apply notwithstanding any other provision of this Act.

(b) Water and sewer utility property in service which was acquired from an affiliate or developer prior to September 1, 1976, included by the utility in its rate base shall be included in all ratemaking formulae and at the installed cost of the property rather than the price set between the entities. Unless the funds for this property are provided by explicit customer agreements, the property shall be considered invested capital and shall not be considered contributions in aid of construction or customer-contributed capital.

(c) Depreciation expense included in cost of service shall include depreciation on all currently used, depreciable utility property owned by the utility.

Programs; Funds and Administration

Sec. 88. The commission is hereby authorized to receive funds for and to administer the following programs:

(1) programs established under Part C of Title III of the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.) also known as the State Energy Conservation Plan;

(2) programs established under Part G of Title III of the Energy Policy and Conservation Act (42 U.S.C. 6371 et seq.) also known as the Institutional Conservation Program;

(3) programs established under the National Energy Extension Service Act (42 U.S.C. 7001 et seq.); and

(4) programs established under the Energy Research and Development Administration appropriation authorization (42 U.S.C. 5907a et seq.) also known as appropriate technology small grants program (Pub.Law 95-39, Sec. 112).

Liberal Construction

Sec. 89. This Act shall be construed liberally to promote the effectiveness and efficiency of regulation of public utilities to the extent that such con-

struction preserves the validity of this Act and its provisions. The provisions of this Act shall be construed to apply so as not to conflict with any authority of the United States.

Repealer; Prior Rules and Regulations to Remain in Effect

Sec. 90. (a) Articles 1119, 1121, 1122, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1268, 1423, 1424, and 1425, Revised Civil Statutes of Texas, 1925, as amended; Section 8a, Chapter 283, Acts of the 40th Legislature, Regular Session, 1927 (Article 1011i, Vernon's Texas Civil Statutes) and all other laws and parts of laws in conflict with this Act are repealed effective September 1, 1976.

(b) All rules and regulations promulgated by regulatory authorities in the exercise of their jurisdiction over public utilities, as defined in this Act, shall remain in effect until such time as the commission or railroad commission promulgates provisions applicable to the exercise of the commission's or railroad commission's jurisdiction over public utilities.

Terminating Services to Elderly and Disabled; Criteria and Guidelines; Establishment

Sec. 91. The Public Utility Commission is authorized to establish criteria and guidelines with the utility industry relating to procedures employed by the industry in terminating services to the elderly and disabled.

Severability

Sec. 92. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

[Acts 1975, 64th Leg., p. 2327, ch. 721, §§ 1 to 91, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 1840, ch. 735, § 2.061, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 93, ch. 57, §§ 1 to 4, eff. April 19, 1979; Acts 1979, 66th Leg., p. 578, ch. 268, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 607, ch. 284, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1553, ch. 669, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1600, ch. 676, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 49, ch. 24, § 1, eff. April 7, 1981; Acts 1981, 67th Leg., p. 70, ch. 31, §§ 1, 2, eff. April 10, 1981; Acts 1981, 67th Leg., p. 312, ch. 123, § 1, eff. May 13, 1981; Acts 1981, 67th Leg., p. 2442, ch. 626, §§ 1, 2, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 2561, ch. 683, §§ 1 to 4, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 2749, ch. 751, § 1, eff. June 16, 1981; Acts 1983, 68th Leg., p. 456, ch. 93, § 14, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 496, ch. 99, § 2, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 646, ch. 146, §§ 1, 2, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 1217, ch. 263, §§ 21 to 24, 26, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 1259, ch. 274, § 1, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 1366, ch. 282, § 1, eff. June 9, 1983; Acts 1983, 68th Leg., p. 1413, ch. 286, § 4, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 2624, ch. 448, § 1, eff. June 17, 1983.]

Section 16(b) of Acts 1983, 68th Leg., p. 457, ch. 93, provides:

"A provision of this Act that increases the interest rate on delinquent taxes applies to those taxes or assessments that are delinquent or become delinquent on or after the effective date of this Act."

Section 27 of Acts 1983, 68th Leg., p. 1229, ch. 263, provides:

"Rules and orders of the railroad commission adopted under the Public Utilities Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes) and in effect September 1, 1983, remain in effect until changed under the Gas Utility Regulatory Act."

Section 2 of Acts 1983, 68th Leg., p. 1321, ch. 274 provides:

"This Act applies only to a proceeding in which the statement of intent or application is filed on or after the effective date of this Act. A proceeding in which the statement of intent or application is filed before the effective date of this Act is governed by the law in effect when the statement of intent or application was filed, and that law is continued in effect for that purpose."

Art. 1446c-1. Standards for Rating Solar Energy Devices

Definitions

Sec. 1. In this Act:

(1) "Commission" means the Public Utility Commission of Texas.

(2) "Solar energy device" means a solar energy collector or solar energy system that provides for collection of solar energy or subsequent use of that energy as thermal, mechanical, or electrical energy.

Adoption of Standards

Sec. 2. (a) The commission shall study and adopt standards for rating solar energy devices for use in performance labeling and certification of solar energy devices within this state.

(b) In adopting standards under this section, the commission shall examine rating standards and certification programs being used by other states and by industry and shall adopt the standards that it finds are the most widely used unless they are not suitable for use in this state. If the commission finds that a widely used standard is not suitable, it may amend the standard or adopt a standard that it finds suitable.

Review

Sec. 3. The commission shall periodically review standards adopted under this Act and shall amend them as necessary to assure that the standards are appropriate in light of current technology and are the same as or similar to those widely used by other states and by industry.

National Standards

Sec. 4. If national standards for rating and certification of solar energy devices are developed by a federal agency in conjunction with the states and industry, the commission shall adopt those standards as the standards for use in this state.

Compliance

Sec. 5. A person rating, labeling, or certifying the performance of a solar energy device in this state shall comply with the standards adopted by the commission under this Act.

Time for Commission Action

Sec. 6. The commission shall adopt the standards required by this Act before March 1, 1984. [Acts 1983, 68th Leg., p. 4132, ch. 650, §§ 1 to 6, eff. Aug. 29, 1983.]

Art. 1446d. Electric Metering in Apartments and Condominiums

Sec. 1. In this Act:

(1) "Apartment house" means a building or buildings containing more than five dwelling units all of which are rented primarily for nontransient use, with rental paid at intervals of one week or longer. Apartment house shall include residential condominiums, whether rented or owner occupied.

(2) "Dwelling unit" means a room or rooms suitable for occupancy as a residence containing kitchen and bathroom facilities.

Sec. 2. (a) After January 1, 1978, no incorporated city or town, including a home-rule city or other political subdivision of the state, may issue a permit, certificate, or other authorization for the construction or occupancy of a new apartment house or conversion to a condominium unless the construction plan provides for individual metering by the utility company or submetering by the owner of each dwelling unit for the measurement of the quantity of electricity, if any, consumed by the occupants within that dwelling unit.

(b) The provisions of Subsection (a) of this section shall not apply to the issuance of a permit to a nonprofit organization for construction of a new apartment house for occupancy by the low-income elderly when the nonprofit organization establishes, by submission of engineering and cost data and a sworn statement, that all cost savings will be passed on to the low-income elderly tenants.

Sec. 3. Notwithstanding any law to the contrary, the Public Utility Commission of Texas shall promulgate rules, regulations, and standards under which any owner, operator, or manager of an apartment house which is not individually metered for electricity for each dwelling unit may install submetering equipment for each individual dwelling unit for the purpose of fairly allocating the cost of each individual dwelling unit's electrical consumption. In addition to other appropriate safeguards for the tenant, such rules and regulations shall require (a) that an apartment house owner shall not impose on the tenant any extra charges, over and above the cost per kilowatt hour which is charged by the utility company to the owner, and (b) that the apart-

ment house owner shall maintain adequate records regarding submetering and shall make such records available for inspection by the tenant during reasonable business hours. Any rule, regulation, or standard promulgated by the commission pursuant to this section shall be deemed to have been entered or adopted under the Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes), and for purposes of enforcement, both utility companies and the owners, operators, or managers of apartment houses included in this Act are subject to enforcement pursuant to Sections 71, 72, 73, 74, 75, 76, and 77 of the Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes). All submetering equipment shall be subject to the same rules, regulations, and standards established by the commission for accuracy, testing, and record keeping of meters installed by electric utilities and shall be subject to the meter testing requirements of Section 36 of the Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes).

Sec. 4. If, during the 90-day period preceding the installation of individual meters or submeters, an owner, operator, or manager of an apartment house has increased rental rates and such increase is attributable to increased costs of utilities, then such owner, operator, or manager shall immediately reduce the rental rate by the amount of such increase and shall refund all of such increase that has previously been collected within said 90-day period. [Acts 1977, 65th Leg., p. 942, ch. 353, §§ 1 to 4, eff. Aug. 29, 1977. Amended by Acts 1983, 68th Leg., p. 2167, ch. 401, § 1, eff. Sept. 1, 1983.]

Art. 1446e. Gas Utility Regulatory Act

ARTICLE I. SHORT TITLE, LEGISLATIVE POLICY, AND DEFINITIONS

Short Title

Sec. 1.01. This Act may be referred to as the Gas Utility Regulatory Act.

Legislative Policy and Purpose

Sec. 1.02. This Act is enacted to protect the public interest inherent in the rates and services of gas utilities. The legislature finds that gas utilities are by definition monopolies in the areas they serve; that therefore the normal forces of competition which operate to regulate prices in a free enterprise society do not operate; and that therefore utility rates, operations, and services are regulated by public agencies, with the objective that the regulation shall operate as a substitute for competition. The purpose of this Act is to establish a comprehensive regulatory system that is adequate to the task of regulating gas utilities as defined by this Act, and to assure rates, operations, and services which are just and reasonable to the consumers and to the utilities.

Definitions

Sec. 1.03. In this Act:

(1) "Person" includes natural persons, partnerships of two or more persons having a joint or common interest, mutual or cooperative associations, and corporations, as defined by this Act.

(2) "Municipality" includes cities and incorporated villages or towns existing, created, or organized under the general, home-rule, or special laws of the state.

(3) "Gas utility" or "utility" includes any person, corporation, river authority, cooperative corporation, or any combination thereof, other than a municipal corporation, or their lessees, trustees, and receivers, now or hereafter owning or operating for compensation in this state equipment or facilities for transmitting or distributing combustible hydrocarbon natural or synthetic natural gas for sale or resale in a manner which is not subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act (15 U.S.C.A., Section 717, et seq.) provided that the production, gathering, transportation, or sale of natural gas or synthetic gas under Section 4, Article 6050, Revised Statutes, the distribution or sale of liquefied petroleum gas, and the transportation, delivery, or sale of natural gas for fuel for irrigation wells or any other direct use in agricultural activities is not included. The term "gas utility" or "utility" does not include any person or corporation not otherwise a gas utility that furnishes gas or gas service only to itself, its employees, or tenants as an incident of that employee service or tenancy, when the gas or gas service is not resold to or used by others.

(4) "Rate" means every compensation, tariff, charge, fare, toll, rental, and classification, or any of them demanded, observed, charged, or collected whether directly or indirectly by any gas utility for any service, product, or commodity described in Subdivision (3) of this section, and any rules, regulations, practices, or contracts affecting any such compensation, tariff, charge, fare, toll, rental, or classification.

(5) "Railroad commission" or "commission" means the Railroad Commission of Texas.

(6) "Regulatory authority" means, in accordance with the context where it is found, either the railroad commission or the governing body of any municipality.

(7) "Affected person" means any gas utility affected by any action of the regulatory authority, any person or corporation whose utility service or rates are affected by any proceeding before the regulatory authority, or any person or corporation that is a competitor of a gas utility with respect to any service performed by the utility or that desires to enter into competition.

- (8) "Affiliated interest" or "affiliate" means:
- (A) any person or corporation owning or holding, directly or indirectly, five percent or more of the voting securities of a gas utility;
- (B) any person or corporation in any chain of successive ownership of five percent or more of the voting securities of a gas utility;
- (C) any corporation five percent or more of the voting securities of which is owned or controlled, directly or indirectly, by a gas utility;
- (D) any corporation five percent or more of the voting securities of which is owned or controlled, directly or indirectly, by any person or corporation that owns or controls, directly or indirectly, five percent or more of the voting securities of any gas utility or by any person or corporation in any chain of successive ownership of five percent of such securities;
- (E) any person who is an officer or director of a gas utility or of any corporation in any chain of successive ownership of five percent or more of voting securities of a gas utility;
- (F) any person or corporation that the railroad commission, after notice and hearing, determines actually exercises any substantial influence or control over the policies and actions of a gas utility, or over which a gas utility exercises that control, or that is under common control with a gas utility, that control being the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of another, whether that power is established through ownership or voting of securities or by any other direct or indirect means; or
- (G) any person or corporation that the railroad commission, after notice and hearing, determines is actually exercising such substantial influence over the policies and action of the gas utility in conjunction with one or more persons or corporations with which they are related by ownership or blood relationship, or by action in concert, that together they are affiliated with the gas utility within the meaning of this section, even though no one of them alone is so affiliated.
- (9) "Allocations" means the division of plant, revenues, expenses, taxes, and reserves between municipalities or between municipalities and unincorporated areas, if those items are used for providing gas utility service in a municipality, or for a municipality and unincorporated areas.
- (10) "Corporation" means any corporation, joint-stock company, or association, domestic or foreign, and its lessees, assignees, trustees, receivers, or other successors in interest, having any of the powers or privileges of corporations not possessed by individuals or partnerships, but does not include municipal corporations unless expressly provided otherwise in this Act.
- (11) "Facilities" means all the plant and equipment of a gas utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any gas utility.
- (12) "Municipally-owned utility" means any utility owned, operated, and controlled by a municipality or by a nonprofit corporation whose directors are appointed by one or more municipalities.
- (13) "Order" means the whole or a part of the final disposition, whether affirmative, negative, injunctive, or declaratory in form, of the regulatory authority in a matter other than rulemaking but including rate setting.
- (14) "Proceeding" means any hearing, investigation, inquiry, or other fact-finding or decision-making procedure under this Act and includes the denial of relief or the dismissal of a complaint.
- (15) "Service" is used in this Act in its broadest and most inclusive sense, and includes any and all acts done, rendered, or performed and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by gas utilities in the performance of their duties under this Act to their patrons, employees, other gas utilities, and the public, as well as the interchange of facilities between two or more of them.
- (16) "Test year" means the most recent 12 months for which operating data for a gas utility are available and shall commence with a calendar quarter or a fiscal year quarter.

**Applicability of Administrative Procedure and
Texas Register Act**

Sec. 1.04. The Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) applies to all procedures under this Act except to the extent inconsistent with this Act.

ARTICLE II. JURISDICTION

Gas Utilities

Sec. 2.01. (a) Subject to the limitations imposed in this Act, and for the purpose of regulating rates and services so that the rates may be fair, just, and reasonable, and the services adequate and efficient, the governing body of each municipality has exclusive original jurisdiction over all gas utility rates, operations, and services provided by any gas utility within its city or town limits.

(b) The railroad commission has exclusive appellate jurisdiction to review all orders or ordinances of municipalities as provided in this Act. The railroad

commission has exclusive original jurisdiction over the rates and services of gas utilities distributing natural gas or synthetic natural gas in areas outside the limits of municipalities, and it also has exclusive original jurisdiction over the rates and services of gas utilities transmitting, transporting, delivering, or selling natural gas or synthetic natural gas to gas utilities engaged in distributing the gas to the public.

(c) This Act is cumulative of existing laws relating to the jurisdiction, power, or authority of the railroad commission over gas utilities and, except as specifically in conflict with this Act, that jurisdiction, power, and authority is not limited by this Act. Provisions of this Act applicable to gas utilities within the jurisdiction of the railroad commission apply to all gas utilities, including those that are within the jurisdiction, power, or authority of the railroad commission by virtue of laws other than this Act.

Municipally Owned Gas Utilities

Sec. 2.02. This article does not confer on the railroad commission power or jurisdiction to regulate or supervise the rates or service of any gas utility owned and operated by any municipality within its boundaries either directly or through a municipally owned corporation, or to affect or limit the power, jurisdiction, or duties of the municipalities that have elected to regulate and supervise public utilities within their boundaries, except as provided in this Act.

ARTICLE III. MUNICIPALITIES

Franchises

Sec. 3.01. This Act does not limit the rights and powers of a municipality to grant or refuse franchises to use the streets and alleys within its limits and to make the statutory charges for the use, but no provision of any franchise agreement shall limit or interfere with any power conferred on the railroad commission by this Act. If a municipality performs regulatory functions under this Act, it may make charges provided for in the applicable franchise agreement, together with any other charges permitted by this Act.

Rate Determination

Sec. 3.02. Any municipality regulating its gas utilities pursuant to this Act shall require from those utilities all necessary data to make a reasonable determination of rate base, expenses, investment, and rate of return within the municipal boundaries. The standards for that determination shall be based on the procedures and requirements of this Act and the municipality shall retain any and all personnel necessary to make the determination of reasonable rates required under this Act.

Authority of Governing Body; Cost Reimbursement

Sec. 3.03. (a) The governing body of any municipality participating in or conducting ratemaking proceedings shall have the right to select and engage rate consultants, accountants, auditors, attorneys, engineers, or any combination thereof, to conduct investigations, present evidence, advise and represent the governing body, and assist with litigation or gas utility ratemaking proceedings before any regulatory authority or in court. The gas utility engaged in those proceedings shall be required to reimburse the governing body for the reasonable costs of those services to the extent found reasonable by the applicable regulatory authority.

(b) A municipality shall have standing in all cases before the railroad commission, subject to the right of the railroad commission to consolidate that municipality with other parties on issues of common interest, regarding the utility's rates and services within its corporate limits and shall be entitled to judicial review of orders regarding those proceedings in accordance with Section 8.01 of this Act.

Assistance by Railroad Commission

Sec. 3.04. The railroad commission may advise and assist municipalities upon request in connection with questions and proceedings arising under this Act. The assistance may include aid to municipalities in connection with matters pending before the railroad commission, or the courts, or before the governing body of any municipality, including making members of the staff available as witnesses and otherwise providing evidence.

Appeal

Sec. 3.05. (a) Any party to a rate proceeding before the governing body of a municipality may appeal the decision of the governing body to the railroad commission.

(b) Citizens of a municipality may appeal the decision of the governing body in any rate proceeding to the railroad commission through the filing of a petition for review signed by the lesser of 20,000 or 10 percent of the number of qualified voters of such municipality.

(c) Ratepayers of a municipally owned gas utility outside the municipal limits may appeal any action of the governing body affecting the rates of the municipally owned gas utility through filing with the railroad commission a petition for review signed by the lesser of 10,000 or 5 percent of the ratepayers served by the utility outside the municipal limits. For purposes of this subsection each person receiving a separate bill shall be considered as a ratepayer, but no person shall be considered as being more than one ratepayer notwithstanding the number of bills received. The petition for review shall be considered properly signed if signed by any

person, or spouse of any person, in whose name residential utility service is carried.

(d) The appeal process shall be instituted within 30 days of the final decision by the governing body with the filing of a petition for review with the railroad commission and the serving of copies on all parties to the original rate proceeding.

(e) The railroad commission shall hear the appeal de novo based on the test year presented to the municipality, adjusted for known changes and conditions that are measurable with reasonable accuracy, and by its final order, which shall be entered not more than 120 days from the date the appeal is perfected, the railroad commission shall fix such rates that the municipality should have fixed in the ordinance from which the appeal was taken. In the event that the railroad commission fails to enter its final order within 120 days from the date the appeal is perfected, the schedule of rates proposed by the utility shall be deemed to have been approved by the commission and effective upon the expiration of the 120-day period. Any rates, whether temporary or permanent, set by the railroad commission shall be prospective and observed from and after the applicable order of the railroad commission, except interim rate orders necessary to effect uniform system-wide rates.

ARTICLE IV. RECORDS, REPORTS, INSPECTIONS, RATES, AND SERVICES

Records of Gas Utility: Rates, Methods, and Accounts

Sec. 4.01. (a) Every gas utility shall keep and render to the regulatory authority in the manner and form prescribed by the railroad commission uniform accounts of all business transacted. The railroad commission may also prescribe forms of books, accounts, records, and memoranda to be kept by gas utilities, including the books, accounts, records, and memoranda of the rendition of and capacity for service as well as the receipts and expenditures of money, and any other forms, records, and memoranda which in the judgment of the railroad commission may be necessary to carry out any of the provisions of this Act. In the case of a gas utility subject to regulations by a federal regulatory agency, compliance with the system of accounts prescribed for the particular class of utilities by the agency may be deemed a sufficient compliance with the system prescribed by the railroad commission; provided, however, that the railroad commission may prescribe forms of books, accounts, records, and memoranda covering information in addition to that required by the federal agency. The system of accounts and the forms of books, accounts, records, and memoranda prescribed by the railroad commission for a gas utility or class of utilities must not conflict nor be inconsistent with the systems and forms established by a

federal agency for that gas utility or class of utilities.

(b) The railroad commission shall fix proper and adequate rates and methods of depreciation, amortization, or depletion of the several classes of property of each gas utility, and shall require every gas utility to carry a proper and adequate depreciation account in accordance with the rates and methods and with such other rules and regulations as the railroad commission prescribes. The rates, methods, and accounts shall be utilized uniformly and consistently throughout the rate setting and appeal proceedings.

(c) Every gas utility shall keep separate accounts to show all profits or losses resulting from the sale or lease of appliances, fixtures, equipment, or other merchandise. That profit or loss may not be taken into consideration by the regulatory authority in arriving at a rate to be charged for service by a gas utility, to the extent that that merchandise is not integral to the provision of utility service.

(d) Every gas utility is required to keep and render its books, accounts, records, and memoranda accurately and faithfully in the manner and form prescribed by the railroad commission, and to comply with all directions of the regulatory authority relating to those books, accounts, records, and memoranda. The regulatory authority may require the examination and audit of all accounts.

(e) In determining the allocation of tax savings derived from application of methods such as liberalized depreciation and amortization and the investment tax credit, the regulatory authority shall equitably balance the interests of present and future customers and shall apportion the benefits between consumers and the gas utilities accordingly. If any portion of the investment tax credit has been retained by a gas utility, that same amount shall be deducted from the original cost of the facilities or other addition to the rate base to which the credit applied, to the extent allowed by the Internal Revenue Code.

(f) For the purposes of this section, "gas utility" includes "municipally owned utility."

Powers of Railroad Commission

Sec. 4.02. The railroad commission shall have the power to:

(1) require that gas utilities report to it such information relating to themselves and affiliated interests both within and without the State of Texas as it may consider useful in the administration of this Act;

(2) establish forms for all reports;

(3) determine the time for reports and the frequency with which any reports are to be made;

(4) require that any reports be made under oath;

(5) require that a copy of any contract or arrangement between any gas utility and any affiliated interest be filed with it, and require a contract or arrangement of that type not in writing to be reduced to writing and filed with it;

(6) require that a copy of any report filed with any federal agency or any governmental agency or body of any other state be filed with it; and

(7) require that a copy of annual reports showing all payments of compensation (other than salary or wages subject to the withholding of federal income tax) to residents of Texas, or with respect to legal, administrative, or legislative matters in Texas, or for representation before the Texas Legislature or any governmental agency or body be filed with it.

Inspections; Examination Under Oath; Compelling Production of Records; Inquiry Into Management and Affairs

Sec. 4.03. (a) Any regulatory authority, and when authorized by the regulatory authority, its counsel, agents, and employees, is entitled, at reasonable times and for reasonable purposes, to inspect and obtain copies of the papers, books, accounts, documents, and other business records, and to inspect the plant, equipment, and other property of any gas utility within its jurisdiction. The regulatory authority may examine under oath, or it may authorize the person conducting the investigation to examine under oath, any officer, agent, or employee of any gas utility in connection with the investigation. The regulatory authority may require, by order or subpoena served on any gas utility, the production within this state at the time and place it may designate, of any books, accounts, papers, or records kept by the gas utility outside the state, or verified copies in lieu thereof if the railroad commission so orders. Any gas utility failing or refusing to comply with the order or subpoena is in violation of this Act.

(b) A member, agent, or employee of the regulatory authority may enter the premises occupied by a gas utility to make inspections, examinations, and tests and to exercise any authority provided by this Act. A member, agent, or employee of the regulatory authority may act under this subsection only during reasonable hours and after giving reasonable notice to the utility. The gas utility is entitled to be represented when inspections, examinations, and tests are made on its premises. Reasonable time for the utility to secure a representative shall be allowed before commencing an inspection, examination, or test.

(c) The regulatory authority may inquire into the management and affairs of all gas utilities, and shall keep itself informed as to the manner and method in which the same are conducted.

Reporting of Advertising or Public Relations Expenses

Sec. 4.04. The regulatory authority may require an annual reporting from each utility company of all its expenditures for business gifts and entertainment, and institutional, consumption-inducing and other advertising or public relations expenses. The regulatory authority may not allow as costs or expenses for ratemaking purposes any of these expenditures which the regulatory authority determines not to be in the public interest. The cost of legislative-advocacy expenses may not in any case be allowed as costs or expenses for ratemaking purposes. Reasonable charitable or civic contributions may be allowed, but may not exceed the amount approved by the regulatory authority.

Unlawful Rates, Rules, and Regulations

Sec. 4.05. It shall be unlawful for any utility to charge, collect, or receive any rate for gas utility service or impose any rule or regulation other than as provided by this Act.

Filing Schedule for Rates, Rules, and Regulations

Sec. 4.06. Every gas utility shall file with each regulatory authority schedules showing all rates which are subject to the original or appellate jurisdiction of the regulatory authority and which are in force at the time of any gas utility service, product, or commodity offered by the utility. Every gas utility shall file with, and as a part of those schedules, all rules and regulations relating to or affecting the rates, gas utility service, product, or commodity furnished by the utility.

Office of Gas Utility; Records; Removal From State

Sec. 4.07. Every gas utility shall have an office in a county of this state in which its property or some part thereof is located in which it shall keep all books, accounts, records, and memoranda required by the railroad commission to be kept in the state. Books, accounts, records, or memoranda required by the regulatory authority to be kept in the state may not be removed from the state except on conditions prescribed by the railroad commission.

Communications by Gas Utilities With Regulatory Authority; Regulations and Records

Sec. 4.08. (a) The regulatory authority shall prescribe regulations governing communications by gas utilities, their affiliates, and their representatives, with the regulatory authority or any member or employee of the regulatory authority.

(b) The record shall contain the name of the person contacting the regulatory authority or member or employee of the regulatory authority, the name of the business entities represented, a brief description of the subject matter of the communication, and the action, if any, requested by the gas utility,

affiliate, or representative. These records shall be available to the public on a monthly basis.

Standards of Service

Sec. 4.09. (a) Every gas utility shall furnish service, instrumentalities, and facilities that are safe, adequate, efficient, and reasonable.

(b) The regulatory authority after reasonable notice and hearing had on its own motion or on complaint, may:

(1) ascertain and fix just and reasonable standards, classifications, regulations, or practices to be observed and followed by any or all gas utilities with respect to the service to be furnished;

(2) ascertain and fix adequate and reasonable standards for the measurement of the quantity, quality, pressure, or other condition pertaining to the supply of the service;

(3) prescribe reasonable regulations for the examination and testing of the service and for the measurement thereof; and

(4) establish or approve reasonable rules, regulations, specifications, and standards to secure the accuracy of all meters, instruments, and equipment used for the measurement of any service of any gas utility.

(c) Any standards, classifications, regulations, or practices observed or followed by any gas utility may be filed by it with the regulatory authority and shall continue in force until amended by the gas utility or until changed by the regulatory authority as provided by this Act.

Examination and Test of Equipment

Sec. 4.10. (a) The regulatory authority may examine and test any meter, instrument, or equipment used for the measurement of any service of any gas utility, may enter any premises occupied by any gas utility for the purpose of making the examinations and tests and exercising any power provided for in this Act, and may set up and use on those premises any apparatus and appliances necessary for those purposes. The gas utility is entitled to be represented at the making of the examinations, tests, and inspections. The gas utility and its officers and employees shall facilitate the examinations, tests, and inspections by giving every reasonable aid to the regulatory authority and any person or persons designated by the regulatory authority for the performance of those duties.

(b) Any consumer or user may have any meter or measuring device tested by the utility once without charge, after a reasonable period to be fixed by the regulatory authority by rule, and at shorter intervals on payment of reasonable fees fixed by the regulatory authority. The regulatory authority shall declare and establish reasonable fees to be

paid for other examining and testing of the meters and other measuring devices on the request of the consumer. If the test is requested to be made within the period of presumed accuracy as fixed by the regulatory authority since the last test of the same meter or other measuring device, the fee to be paid by the consumer or user at the time of this request shall be refunded to the consumer or user if the meter or measuring device is found unreasonably defective or incorrect to the substantial disadvantage of the consumer or user. If the consumer's request is made at a time beyond the period of presumed accuracy fixed by the regulatory authority since the last test of the same meter or measuring device, the utility shall make the test without charge to the consumer or user.

ARTICLE V. PROCEEDINGS BEFORE REGULATORY AUTHORITY

Power to Ensure Compliance; Rate Regulation

Sec. 5.01. Subject to the provisions of this Act, the railroad commission is hereby vested with all authority and power of the State of Texas to ensure compliance with the obligations of gas utilities in this Act. For this purpose the regulatory authority is empowered to fix and regulate rates of gas utilities, including rules and regulations for determining the classification of customers and services and for determining the applicability of rates. A rule or order of the regulatory authority may not conflict with the rulings of any federal regulatory body.

Just and Reasonable Rates

Sec. 5.02. (a) It shall be the duty of the regulatory authority to ensure that every rate made, demanded, or received by any gas utility, or by any two or more gas utilities jointly, is just and reasonable. Rates may not be unreasonably preferential, prejudicial, or discriminatory, but must be sufficient, equitable, and consistent in application to each class of consumers. For ratemaking purposes, the railroad commission may treat two or more municipalities served by a gas utility as a single class if the railroad commission considers that treatment to be appropriate.

(b) Rates charged or offered to be charged by a gas utility for pipeline-to-pipeline transactions and to transportation, industrial, and other similar large volume contract customers, but excluding city gate sales-for-resale to gas distribution utilities, are considered to be just and reasonable and otherwise to comply with this section, and shall be approved by the regulatory authority, if:

(1) neither the gas utility nor the customer had an unfair advantage during the negotiations;

(2) the rates are substantially the same as rates between the gas utility and two or more of those

customers under the same or similar conditions of service; or

(3) competition does or did exist either with another gas utility, another supplier of natural gas, or with a supplier of an alternative form of energy.

(c) If a complaint is filed with the railroad commission by a transmission pipeline purchaser of gas sold or transported under any such pipeline-to-pipeline or transportation rate, then the provisions of Subsection (b) shall not apply.

Fixing Overall Revenues

Sec. 5.03. In fixing the rates of a gas utility the regulatory authority shall fix its overall revenues at a level that will permit the utility a reasonable opportunity to earn a reasonable return on its invested capital used and useful in rendering service to the public over and above reasonable and necessary operating expenses.

Fair Return; Burden of Proof

Sec. 5.04. (a) The regulatory authority may not prescribe any rate that will yield more than a fair return on the adjusted value of the invested capital used and useful in rendering service to the public.

(b) In any proceeding involving any proposed change of rates, the burden of proof to show that the proposed change, if proposed by the utility, or that the existing rate, if it is proposed to reduce the rate, is just and reasonable is on the gas utility.

Components of Adjusted Value of Invested Capital

Sec. 5.05. (a) The components of adjusted value of invested capital shall be determined in accordance with this section.

(b) Utility rates shall be based on the adjusted value of property used by and useful to the gas utility in providing service including, if necessary to the financial integrity of the utility, construction work in progress at cost as recorded on the books of the utility. The adjusted value of the property shall be a reasonable balance between original cost less depreciation and current cost less an adjustment for both present age and condition. The regulatory authority has discretion to determine a reasonable balance that reflects not less than 60 percent nor more than 75 percent of the original cost (that is, the actual money cost or the actual money value of any consideration paid other than money) of the property at the time it was dedicated to public use, whether by the utility that is the present owner or by a predecessor, less depreciation, and not less than 25 percent nor more than 40 percent of the current cost less an adjustment for both present age and condition. The regulatory authority may consider inflation, deflation, quality of service being provided, the growth rate of the service area, and

the need for the gas utility to attract new capital in determining a reasonable balance.

(c) Costs of facilities, revenues, expenses, taxes, and reserves shall be separated or allocated as prescribed by the regulatory authority.

Components of Net Income

Sec. 5.06. (a) The components of net income shall be determined in accordance with this section. "Net income" means the total revenues of the gas utility less all reasonable and necessary expenses as determined by the regulatory authority. The regulatory authority shall determine expenses and revenues in a manner consistent with Subsections (b)-(d) of this section.

(b) Payment to affiliated interests for costs of any services, or any property, right, or thing, or for interest expense may not be allowed either as capital costs or as expense except to the extent that the regulatory authority shall find such payment to be reasonable and necessary for each item or class of items as determined by the railroad commission. Any such finding shall include specific findings of the reasonableness and necessity of each item or class of items allowed and a finding that the price to the utility is no higher than prices charged by the supplying affiliate to its other affiliates or divisions for the same item or class of items, or to unaffiliated persons or corporations.

(c) If the gas utility is a member of an affiliated group that is eligible to file a consolidated income tax return, and if it is advantageous to the gas utility to do so, income taxes shall be computed as though a consolidated return had been so filed and the utility had realized its fair share of the savings resulting from the consolidated return, unless it is shown to the satisfaction of the regulatory authority that it was reasonable to choose not to consolidate returns. The amounts of income taxes saved by a consolidated group of which a gas utility is a member by reason of the elimination in the consolidated return of the intercompany profit on purchases by the gas utility from an affiliate shall be applied to reduce the cost of the property or services so purchased. The investment tax credit allowed against federal income taxes, to the extent retained by the utility, shall be applied as a reduction in the rate based contribution of the assets to which the credit applies, to the extent and at the rate allowed by the Internal Revenue Code.¹

(d) The regulatory authority may promulgate reasonable rules and regulations with respect to the allowance or disallowance of certain expenses for ratemaking purposes.

**Unreasonable or Violative Existing Rates;
Investigating Costs of Obtaining Service
From Another Source**

Sec. 5.07. (a) If the regulatory authority, after reasonable notice and hearing, on its own motion or on complaint by any affected person, finds that the existing rates of any gas utility for any service are unreasonable or in any way in violation of any provision of law, the regulatory authority shall determine the just and reasonable rates, including maximum or minimum rates, to be thereafter observed and in force, and shall fix the same by order to be served on the gas utility. Those rates shall constitute the legal rates of the gas utility until changed as provided by this Act.

(b) If a gas utility does not itself produce that which it distributes, transmits, or furnishes to the public for compensation, but obtains the same from another source, the regulatory authority has the power and authority to investigate the cost of that production in any investigation of the reasonableness of the rates of the gas utility.

**Statement of Intent to Change Rates; Major Changes;
Hearing; Suspension of Rate Schedule;
Determination of Rate Level**

Sec. 5.08. (a) No utility may make changes in its rates except by filing a statement of intent with the regulatory authority having original jurisdiction at least 35 days prior to the effective date of the proposed change. The statement of intent shall include proposed revisions of tariffs and schedules and a statement specifying in detail each proposed change, the effect the proposed change is expected to have on the revenues of the company, the classes and numbers of utility consumers affected, and other information required by the regulatory authority's rules and regulations. A copy of the statement shall be mailed or delivered to the appropriate officer of each affected municipality, and notice shall be given by publication in conspicuous form and by placing a notice to the public of the proposed change once in each week for four successive weeks in a newspaper having general circulation in each county containing territory affected by the proposed change and to such other affected persons as required by the regulatory authority's rules and regulations. However, notwithstanding the above, instead of the publication of newspaper notice contemplated above, a gas utility may provide notice to the public in areas outside the limits of the municipalities, and within the limits of municipalities with a population of less than 2,500 according to the most recent federal census by mailing such notice by United States mail, postage prepaid, to the billing address of each directly affected customer, or by including the notice in such customer's bill in a conspicuous form.

(b) The regulatory authority, for good cause shown, may, except in the case of major changes,

allow changes in rate to take effect prior to the end of the 35-day period under conditions it prescribes, subject to suspension as provided by this Act. All changes of that type shall be indicated immediately on its schedules by the utility. "Major changes" means an increase in rates which would increase the aggregate revenues of the applicant more than the greater of \$100,000 or 2½ percent, but does not include changes in rates allowed to go into effect by the regulatory authority or made by the utility pursuant to an order of the regulatory authority after hearings held on notice to the public.

(c) If there is filed with the regulatory authority any schedule modifying or resulting in a change in any rates then in force, the regulatory authority shall on complaint by any affected person or may on its own motion, at any time within 30 days from the date when the change would or has become effective, and, if it so orders, without answer or other formal pleading by the utility, but on reasonable notice, including notice to the governing bodies of all affected municipalities and counties, enter on a hearing to determine the propriety of the change. The regulatory authority shall hold the hearing in every case in which the change constitutes a major change in rates, provided that an informal proceeding may satisfy this requirement if no complaint has been received before the expiration of 45 days after notice of the change has been filed.

(d) Pending the hearing and decision, the local regulatory authority, after delivery to the affected utility of a statement in writing of its reasons therefor, may suspend the operation of the schedule for a period not to exceed 90 days beyond the date on which the schedule of rates would otherwise go into effect, and the railroad commission may suspend the operation of the schedule for a period not to exceed 150 days beyond the date on which the schedule would otherwise go into effect. If the regulatory authority does not make a final determination concerning any schedule of rates prior to expiration of the period or periods of suspension, the schedule is considered to have been approved by the regulatory authority. This approval is subject to the authority of the regulatory authority thereafter to continue a hearing in progress. The regulatory authority may in its discretion fix temporary rates for any period of suspension under this subsection. During the suspension by the regulatory authority as provided by this subsection, the rates in force when the suspended schedule was filed continue in force unless the regulatory authority establishes a temporary rate. The regulatory authority shall give preference to the hearing and decision of questions arising under this subsection over all other questions pending before it and shall decide the questions as speedily as possible.

(e) If the regulatory authority fails to make its final determination of rates within 90 days from the

date that the proposed change otherwise would have gone into effect, the utility concerned may put a changed rate, not to exceed the proposed rate, into effect on the filing with the regulatory authority of a bond payable to the regulatory authority in an amount and with sureties approved by the regulatory authority conditioned on refund and in a form approved by the regulatory authority. The utility concerned shall refund or credit against future bills all sums collected during the period of suspension in excess of the rate finally ordered plus interest at the current rate as finally determined by the regulatory authority.

(f) If, after hearing, the regulatory authority finds the rates to be unreasonable or in any way in violation of any provision of law, the regulatory authority shall determine the level of rates to be charged or applied by the utility for the service in question and shall fix the same by order to be served upon the utility. Those rates are thereafter to be observed until changed as provided by this Act.

Rates for Areas not Within Municipality

Sec. 5.09. Without railroad commission approval, gas utility rates of areas not within a municipality may not exceed 115 percent of the average of all rates for similar services of all municipalities served by the same utility within the same county.

Unreasonable Preference or Prejudice as to Rates or Services

Sec. 5.10. No gas utility may, as to rates or services, make or grant any unreasonable preference or advantage to any corporation or person within any classification, or subject any corporation or person within any classification to any unreasonable prejudice or disadvantage. No gas utility may establish and maintain any unreasonable differences as to rates of service either as between localities or as between classes of service.

Equality of Rates and Services

Sec. 5.11. No gas utility may, directly or indirectly, by any device whatsoever or in any manner, charge, demand, collect, or receive from any person a greater or lesser compensation for any service rendered or to be rendered by the utility than that prescribed in the schedule of rates of the gas utility applicable when filed in the manner provided in this Act, nor may any person knowingly receive or accept any service from a gas utility for a compensation greater or less than that prescribed in the schedules, provided that all rates being charged and collected by a gas utility on September 1, 1933, may be continued until schedules are filed. This Act does not prevent a cooperative corporation from returning to its members the whole, or any part of, the net earnings resulting from its operations in

proportion to their purchases from or through the corporation.

Discrimination; Restriction on Competition

Sec. 5.12. No gas utility may discriminate against any person or corporation that sells or leases equipment or performs services in competition with the gas utility, nor may any gas utility engage in any other practice that tends to restrict or impair that competition.

Payments in Lieu of Taxes

Sec. 5.13. No payments made in lieu of taxes by a gas utility to the municipality by which it is owned may be considered an expense of operation for the purpose of determining, fixing, or regulating the rates to be charged for the provision of utility service to a school district or hospital district. No rates received by a gas utility from a school district or hospital district may be used to make or to cover the cost of making payments in lieu of taxes to the municipality by which the gas utility is owned.

ARTICLE VI. SALE OF PROPERTY AND MERGERS

Report of Sale, Merger, etc.; Investigation; Disallowance of Transaction

Sec. 6.01. No gas utility may sell, acquire, lease, or rent any plant as an operating unit or system in this state for a total consideration in excess of \$100,000, or merge or consolidate with another gas utility operating in this state, unless the gas utility reports the transaction to the railroad commission within a reasonable time. On the filing of a report with the railroad commission, the railroad commission shall investigate the matter, with or without public hearing, to determine whether the action is consistent with the public interest. In reaching its determination, the railroad commission shall take into consideration the reasonable value of the property, facilities, or securities to be acquired, disposed of, merged or consolidated. If the railroad commission finds that the transaction is not in the public interest, the railroad commission shall take the effect of the transaction into consideration in the ratemaking proceedings and shall disallow the effect of the transaction if it will unreasonably affect rates or service. The provisions of this section do not apply to the purchase of units of property for replacement or to the addition to the facilities of the gas utility by construction.

Purchase of Voting Stock in Another Gas Utility: Report

Sec. 6.02. No gas utility may purchase voting stock in another gas utility doing business in Texas, unless the utility reports the purchase to the railroad commission.

Loans to Stockholders: Report

Sec. 6.03. No gas utility may loan money, stocks, bonds, notes, or other evidences of indebtedness to any corporation or person owning or holding directly or indirectly any stock of the gas utility unless the gas utility reports the transaction to the railroad commission within a reasonable time.

Gas Reserve Rights: Approval of Sale, Conveyance, etc.

Sec. 6.04. No gas utility may sell, convey, bank, or assign rights to gas reserves to a utility or, where not in conflict with federal law, to an interstate pipeline without prior approval of the railroad commission.

ARTICLE VII. RELATIONS WITH AFFILIATED INTERESTS**Jurisdiction Over Affiliated Interests**

Sec. 7.01. The railroad commission has jurisdiction over affiliated interests having transactions with gas utilities under the jurisdiction of the railroad commission to the extent of access to all accounts and records of the affiliated interests relating to the transactions, including but in no way limited to accounts and records of joint or general expenses, any portion of which may be applicable to the transactions.

Disclosure of Substantial Interest in Voting Securities

Sec. 7.02. The railroad commission may require the disclosure of the identity and respective interests of every owner of any substantial interest in the voting securities of any gas utility or its affiliated interest. One percent or more is a substantial interest within the meaning of this section.

ARTICLE VIII. JUDICIAL REVIEW**Right to Judicial Review; Evidence**

Sec. 8.01. Any party to a proceeding before the railroad commission is entitled to judicial review under the substantial evidence rule. The issue of confiscation shall be determined by a preponderance of the evidence.

ARTICLE IX. VIOLATIONS AND ENFORCEMENT**Action to Enjoin or Require Compliance**

Sec. 9.01. If it appears to the railroad commission that any gas utility or any other person or corporation is engaged in, or is about to engage in, any act in violation of this Act or of any order, rule, or regulation of the railroad commission entered or adopted under the provisions of this Act, or that the gas utility or any other person or corporation is failing to comply with the provisions of this Act or with any of those rules, regulations, or orders, the attorney general on request of the railroad commis-

sion, in addition to any other remedies provided by this Act, shall bring an action in a court of competent jurisdiction in the name of and on behalf of the railroad commission against the gas utility or other person or corporation to enjoin the commencement or continuation of the act, or to require compliance with this Act or the rule, regulation, or order.

Penalty Against Utility or Affiliated Interest

Sec. 9.02. (a) Any gas utility or affiliated interest that knowingly violates a provision of this Act, fails to perform a duty imposed on it, or fails, neglects, or refuses to obey an order, rule, regulation, direction, or requirement of the railroad commission or a decree or judgment of a court, is subject to a civil penalty of not less than \$1,000 nor more than %5,000 for each violation.

(b) A gas utility or affiliated interest commits a separate violation for each day a violation described by Subsection (a) of this section continues.

(c) The attorney general shall institute suit on his own initiative or at the request of, in the name of, and on behalf of the railroad commission, in a court of competent jurisdiction to recover the penalty under this section.

Personal Penalty

Sec. 9.03. (a) A person or persons who knowingly violate the provisions of this Act commit an offense. An offense under this subsection is a felony of the third degree.

(b) All penalties accruing under this Act are cumulative and a suit for the recovery of any penalty does not bar or affect the recovery of any other penalty, nor does it bar any criminal prosecution against a gas utility, officer, director, agent, or employee of a gas utility, or any other person.

Contempt Proceedings

Sec. 9.04. If any person fails to comply with any lawful order of the railroad commission or with any subpoena or subpoena duces tecum or if any witness refuses to testify about any matter on which he may be lawfully interrogated, the railroad commission may apply to any court of competent jurisdiction to compel obedience by proceedings for contempt.

Disposition of Fines and Penalties

Sec. 9.05. Fines and penalties collected under this Act in other than criminal proceedings shall be paid to the railroad commission and paid by the railroad commission to the state treasury to be placed in the general revenue fund.

Venue

Sec. 9.06. Suits for injunction or penalties under the provisions of this Act may be brought in Travis

County, in any county where the violation is alleged to have occurred, or in the county of residence of any defendant.

Public Utility Counsel

Sec. 9.07. (a) The independent Office of Public Utility Counsel is hereby established to represent the interests of residential consumers.

(b) The chief executive of the Office of Public Utility Counsel is the public utility counsel, hereinafter referred to as counsellor. The counsellor is appointed by the governor with the advice and consent of the senate to a two-year term that expires on February 1 of the final year of the term.

(c) The counsellor shall employ such lawyers, economists, engineers, consultants, statisticians, accountants, clerical staff, and other employees as he or she deems necessary to carry out the provisions of this section. All employees shall receive such compensation as is fixed by the legislature from the assessment imposed by Section 78 of the Public Utility Regulatory Act.¹

(d) The counsellor shall be a resident of Texas and admitted to the practice of law in this state who has demonstrated a strong commitment and involvement in efforts to safeguard the rights of the public and possesses the knowledge and experience necessary to practice effectively in utility proceedings.

(e) During the period of the counsellor's employment and for a period of one year following the termination of employment, it shall be unlawful for any person employed as counsellor to have a direct or indirect interest in any utility company regulated under the Gas Utility Regulatory Act to provide legal services directly or indirectly to or be employed in any capacity by a utility company regulated under the Gas Utility Regulatory Act, its parent, or its subsidiary companies, corporations, or cooperatives; but such person may otherwise engage in the private practice of law after the termination of employment as the counsellor.

(f) The Office of Public Utility Counsel:

(1) may appear or intervene as a party or otherwise represent residential consumers as a class in appeals to the railroad commission only at the written request of an affected municipality's governing body, in which case it will represent the residential consumers of requesting municipalities as a class;

(2) may initiate or intervene as a matter of right or otherwise appear in any judicial proceedings involving or arising out of any action taken by the railroad commission in a proceeding in which the counsel was a party;

(3) may have access as any party, other than staff, to all records gathered by the railroad commission under the authority of Subsection (a), Section 4.03, of the Gas Utility Regulatory Act;

(4) may obtain discovery of any nonprivileged matter which is relevant to the subject matter involved in any proceeding or petition before the commission;

(5) may represent individual residential consumers with respect to their disputed complaints concerning utility services unresolved before the railroad commission; and

(6) may recommend legislation to the legislature which in its judgment would positively affect the interests of residential consumers.

(g) Nothing in this section shall be construed as in any way limiting the authority of the railroad commission to represent residential consumers.

(h) The appearance of the public counsel in any proceeding in no way precludes the appearance of other parties on behalf of residential consumers. The public counsel shall not be grouped with any other parties.

¹Article 1446c, § 78.

ARTICLE X. MISCELLANEOUS PROVISIONS

Complaint by any Affected Person

Sec. 10.01. Any affected person may complain to the regulatory authority in writing setting forth any act or thing done or omitted to be done by any gas utility in violation or claimed violation of any law which the regulatory authority has jurisdiction to administer, or of any order, ordinance, rule, or regulation of the regulatory authority.

Record of Proceedings; Right to Hearing

Sec. 10.02. A record shall be kept of all proceedings had before the regulatory authority, and all the parties are entitled to be heard in person or by attorney.

Judicial Stay or Suspension of Order, Ruling, or Decision

Sec. 10.03. During the pendency of an appeal, the district court, the court of appeals, or the supreme court, as the case may be, may stay or suspend, in whole or in part, the operation of the regulatory authority order, ruling, or decision and, in granting or refusing a stay or suspension, the court shall act in accordance with the practice of courts exercising equity jurisdiction.

Liberal construction

Sec. 10.04. This Act shall be construed liberally to promote the effectiveness and efficiency of regulation of gas utilities to the extent that construction preserves the validity of this Act and its provisions. The provisions of this Act shall be construed to apply so as not to conflict with any authority of the United States.

[Acts 1983, 68th Leg., p. 1188, ch. 263, § 20, eff. Sept. 1, 1983.]

Section 27 of the 1983 Act provides:

"Rules and orders of the railroad commission adopted under the Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes) and in effect September 1, 1983, remain in effect until changed under the Gas Utility Regulatory Act."

9. TRADE ZONES

Art. 1446.1. Laredo Foreign Trade Zone

The City of Laredo, Webb County, Texas, a municipal corporation organized and incorporated under the laws of the State of Texas, or an instrumentality of the City of Laredo, is authorized to apply for and accept a grant to establish, operate and maintain a foreign trade zone at the Laredo Port of Entry, and other sub-zones, subject to the requirements of federal law and regulations of the Foreign Trade Zones Board.

[Acts 1965, 59th Leg., p. 236, ch. 102, eff. April 27, 1965. Amended by Acts 1981, 67th Leg., p. 287, ch. 112, § 1, eff. May 9, 1981.]

Art. 1446.2. McAllen Trade Zone Corporation

The McAllen Trade Zone, Inc., organized and incorporated under the laws of the State of Texas, with offices at McAllen, Hidalgo County, Texas, is authorized to apply for and accept a grant to establish, operate and maintain a foreign trade zone at the McAllen Port of Entry, and other sub-zones, subject to the requirements of federal law and regulations of the Foreign Trade Zones Board. One of the sub-zones may be in Starr County.

[Acts 1965, 59th Leg., p. 528, ch. 272, eff. May 28, 1965. Amended by Acts 1979, 66th Leg., p. 193, ch. 102, § 1, eff. May 9, 1979.]

Art. 1446.3. Harlingen Trade Zone Corporation

The Harlingen Trade Zone, Inc., organized and incorporated under the laws of the State of Texas, with offices at or near Harlingen, Cameron County, Texas, is authorized to apply for and accept a grant to establish, operate and maintain a foreign trade zone adjacent to any port of entry in Cameron County, Texas, and other sub-zones, subject to the requirements of federal law and regulations of the Foreign Trade Zones Board.

[Acts 1965, 59th Leg., p. 741, ch. 347, eff. June 9, 1965.]

Art. 1446.4. San Angelo Trade Zone Corporation

Sec. 1. The San Angelo Trade Zone, Inc., organized and incorporated under the laws of the State of Texas, with offices at San Angelo, Tom Green County, Texas, is authorized to establish, operate and maintain a foreign trade zone at San Angelo, Tom Green County, Texas, and other sub-zones.

Sec. 2. The San Angelo Trade Zone, Inc., is authorized to apply for and accept a grant to establish, operate and maintain a foreign trade zone at the San Angelo Port of Entry, and other sub-zones, subject to the requirements of Public Law No. 397, as amended by Public Law 566, 81st Congress (Ch.

1A, Title 19, Sections 81a-81u, United States Code Annotated), and regulations of the Foreign Trade Zones Board.

[Acts 1967, 60th Leg., p. 2075, ch. 777, eff. June 18, 1967.]

Art. 1446.5. Amarillo Trade Zone Corporation

The Amarillo Trade Zone, Inc., organized and incorporated under the laws of the State of Texas, with offices at or near Amarillo, Potter, and Randall counties, is authorized to apply for and accept a grant to establish, operate, and maintain a foreign-trade zone at Amarillo, Potter, and Randall counties, and other subzones, subject to the requirements of federal law and regulations of the Foreign-Trade Zones Board.

[Acts 1975, 64th Leg., p. 1929, ch. 628, § 1, eff. Sept. 1, 1975.]

Art. 1446.6. Galveston Port of Entry Trade Zone

The city of Galveston, Galveston County, Texas, a municipal corporation organized and incorporated under the laws of the State of Texas, or its board of trustees of the Galveston Wharves, is hereby authorized to apply for and accept a grant or permit to establish, operate, and maintain a United States foreign trade zone as defined in the Foreign Trade Zones Act (19 U.S.C.A. Section 81a (1965)), at the Galveston port of entry, and any subzones thereof, and upon approval of such application and issuance of such grant or permit, to do all things necessary or appropriate to the establishment, operation, and maintenance of such foreign trade zone and any subzones thereof, subject to complying with the requirements of federal law and the regulations of the U. S. Foreign Trade Zones Board, Washington, D.C.

[Acts 1977, 65th Leg., p. 150, ch. 74, § 1, eff. April 25, 1977.]

Art. 1446.7. Houston Port of Entry Foreign Trade Zone

The Houston Foreign-Trade Zone, Incorporated, a private corporation incorporated under the laws of this state, the city of Houston, and the Port of Houston Authority of Harris County, Texas, are each authorized to apply for and accept a grant or permit to establish, operate, and maintain a foreign-trade zone at the Houston port of entry and any subzones of it, and to do anything necessary to establish, operate, and maintain the foreign-trade zone, if the application is approved, subject to federal law and the regulations of the Foreign-Trade Zones Board.

[Acts 1977, 65th Leg., p. 226, ch. 109, § 1, eff. Aug. 29, 1977.]

Art. 1446.8. Joint Airport Boards Foreign Trade Zone

Sec. 1. This Act shall be applicable to joint airport boards (herein called "Authorized Boards") created pursuant to Chapter 114, Acts of the 50th Legislature, Regular Session, 1947 (Article 46d-14, Vernon's Texas Civil Statutes), by two or more cities having a combined population greater than 1,000,000 according to the last preceding federal decennial census.

Sec. 2. Authorized boards are hereby authorized to apply for permits, licenses, and other grants of authority, and to accept the same, to establish, operate, and maintain one or more foreign trade zones within any county or counties in which the airport of the authorized board is situated, as Texas ports of entry under federal law, and to establish, operate, and maintain other sub-zones within the same counties, subject to all requirements of federal law and to the regulations of the Foreign Trade Zones Board of the United States or successor agency.

Sec. 3. In the operation and maintenance of any foreign trade zone or sub-zone under this Act, the authorized board shall have and possess whatever additional powers and authorizations, additional to its other statutory and locally granted powers, as shall be required or necessary to establish, operate, and maintain such foreign trade zones and sub-zones under and in accordance with federal law, rules, and regulations.

[Acts 1977, 65th Leg., p. 268, ch. 129, §§ 1 to 3, eff. Aug. 29, 1977.]

Art. 1446.9. El Paso Trade Zone Corporation

The City of El Paso or the El Paso Trade Zone, Inc., organized and incorporated under the laws of the State of Texas, with offices at or near El Paso, El Paso County, Texas, is authorized to apply for and accept a grant to establish, operate, and maintain a foreign trade zone adjacent to any port of entry in El Paso County, Texas, and other subzones, subject to the requirements of federal law and regulations of the Foreign Trade Zones Board.

[Acts 1977, 65th Leg., p. 372, ch. 183, § 1, eff. May 20, 1977. Amended by Acts 1981, 67th Leg., p. 287, ch. 112, § 2, eff. May 9, 1981.]

Art. 1446.10. San Antonio Foreign Trade Zone

Sec. 1. The city of San Antonio or a nonprofit corporation organized under Texas law and designated by the city of San Antonio is authorized to apply for and accept a grant to establish, operate, and maintain a foreign trade zone at or adjacent to any port of entry in Bexar County, Texas, and other subzones, subject to the requirements of federal law and regulations of the Foreign Trade Zones Board.

Sec. 2. After the nonprofit corporation has accepted a grant to establish, operate, and maintain the foreign trade zone as authorized by this Act, the city may not exercise any further control or supervision over the corporation in regard to the naming of directors and officers of the corporation or to the corporation's internal management or organization.

[Acts 1977, 65th Leg., p. 706, ch. 265, §§ 1, 2, eff. Aug. 29, 1977. Amended by Acts 1981, 67th Leg., p. 2108, ch. 491, § 1, eff. June 11, 1981.]

Art. 1446.11. Brownsville Navigation District Foreign Trade Zone

The Brownsville Navigation District, organized and incorporated under the laws of the State of Texas, is hereby authorized to apply for and accept a grant or permit to establish, operate, and maintain a U. S. Foreign-Trade Zone as defined in the U. S. Foreign-Trade Zone Act (19 U.S.C.A. Section 81a et seq., 1965, as amended) at the Brownsville port of entry, and subzones thereof, and upon approval of such application and issuance of such grant or permit to do all things necessary or appropriate to the establishment, operation, and maintenance of such Foreign-Trade Zone and any subzones thereof subject to compliance with the requirements of federal law and the regulations of the U.S. Foreign Trade Zones Board, Washington, D.C.

[Acts 1979, 66th Leg., p. 1637, ch. 685, § 1, eff. Aug. 27, 1979.]

Art. 1446.12. Rio Grande City Foreign Trade Zone

The Starr County Industrial Foundation, a nonprofit corporation organized and incorporated under the Texas Non-Profit Corporation Act, as amended (Articles 1396-1.01 et seq., Vernon's Texas Civil Statutes), to promote the economic development of Starr County, with offices at Rio Grande City, Starr County, Texas, is authorized to apply for and accept a grant to establish, operate, and maintain a foreign-trade zone at Rio Grande City, Starr County, and other subzones, subject to federal law and the regulations of the Foreign Trade Zones Board.

[Acts 1981, 67th Leg., p. 163, ch. 73, eff. April 30, 1981.]

Art. 1446.13. Del Rio Foreign Trade Zone

The city of Del Rio or a nonprofit corporation organized under the laws of this state and designated by the city of Del Rio is authorized to apply for and accept a grant to establish, operate, and maintain a foreign-trade zone at Del Rio, Val Verde County, and other subzones, subject to federal law and the regulations of the Foreign Trade Zones Board.

[Acts 1981, 67th Leg., p. 348, ch. 137, eff. Aug. 31, 1981.]

Art. 1446.14. Eagle Pass Foreign Trade Zone

The city of Eagle Pass or a nonprofit corporation organized under the laws of this state and designated by the city of Eagle Pass is authorized to apply for and accept a grant to establish, operate, and maintain a foreign-trade zone at Eagle Pass, Maverick County, and other subzones, subject to federal law and the regulations of the Foreign Trade Zones Board.

[Acts 1981, 67th Leg., p. 349, ch. 138, eff. Aug. 31, 1981.]

Art. 1446.15. Foreign Trade Zones in Port Arthur Customs District and Orange and Jefferson Counties

Sec. 1. The City of Beaumont, the Beaumont Chamber of Commerce, the County of Jefferson, the Port of Beaumont Navigation District of Jefferson County, the Beaumont Economic Development Foundation, which is a nonprofit corporation organized and incorporated under the Texas Non-Profit Corporation Act, as amended (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), with offices at Beaumont, Jefferson County, or any other corporation organized under the laws of this state and designated by the Port of Beaumont Navigation District of Jefferson County is authorized to apply for and accept a grant to establish, operate, and maintain a foreign trade zone and subzones at Beaumont, Jefferson County, or other locations in the portion of the Port Arthur Customs District located in this state, subject to federal law and the regulations of the Foreign Trade Zones Board.

Sec. 2. The Orange County Navigation and Port District is authorized to apply for and accept a grant to establish, operate, and maintain a foreign trade zone in Orange County, and other subzones, subject to federal law and the regulations of the Foreign Trade Zones Board.

Sec. 3. The Port of Port Arthur Navigation District of Jefferson County is authorized to apply for and accept a grant to establish, operate, and maintain a foreign trade zone in Jefferson County, and other subzones, subject to federal law and the regulations of the Foreign Trade Zones Board.

Sec. 4. The governing body of the Jefferson County Airport is authorized to apply for and accept a grant to establish, operate, and maintain a foreign trade zone, which may include land inside the boundaries of the airport and up to 1,000 acres of private industrial land adjacent to the airport, in Jefferson County, and other subzones, subject to federal law and the regulations of the Foreign Trade Zones Board.

[Acts 1981, 67th Leg., p. 2194, ch. 509, eff. June 12, 1981.]

Art. 1446.16. Midlothian Foreign Trade Zone

The Midlothian Trade Zone Corporation, organized and incorporated under the laws of the State of

Texas, is authorized to apply for and accept a grant to establish, operate, and maintain a foreign trade zone, adjacent to the port limits of the Dallas-Fort Worth Port of Entry, at Midlothian, Ellis County, Texas, and other subzones within Ellis County, Texas, subject to the requirements of federal law and regulations of the Foreign Trade Zones Board.

[Acts 1983, 68th Leg., p. 588, ch. 122, § 1, eff. May 17, 1983.]

Art. 1446.17. Corpus Christi Foreign Trade Zone

The city of Corpus Christi or the Port of Corpus Christi Authority of Nueces County, Texas, and/or any other approved public agencies that the city of Corpus Christi or the Port of Corpus Christi Authority of Nueces County, Texas, may designate, are authorized to apply to the United States Foreign-Trade Zones Board in Washington, D.C., for and accept a Grant of Permit to establish, operate, and maintain a United States foreign-trade zone and subzones, subject to federal law and the regulations of the United States Foreign-Trade Zones Board.

[Acts 1983, 68th Leg., p. 2418, ch. 426, § 1, eff. June 17, 1983.]

CHAPTER ELEVEN. ROADS**Art.**

1447. Charter.

TOLL ROADS

1448. Toll Road: Incorporation.

1449. Charter.

1450. Examination.

1451. Registration.

1452. Duration.

1453. Charter Amendments.

1454. Powers.

1455. Use of State Lands.

1456. Private Lands.

1457. Road Construction.

1458. Railroad Crossings.

1459. Public Way Crossings.

1460. Openings.

1461. Culverts, Etc.

1462. Obstruction of Streams.

1463. Eminent Domain.

1464. Rules and Rates.

1465. Use of Road.

Art. 1447. Charter

The charter of a road company, in addition to the information required by article 1304,¹ shall state: First, the kind of road intended to be constructed: Second, the places from and to which the road is intended to be run: Third, the counties through which it is intended to be run: Fourth, the estimated length of the road.

[Acts 1925, S.B. 84.]

¹ Repealed; see, now, art. 1396-3.02.

TOLL ROADS

Art. 1448. Toll Road: Incorporation

Any number of persons, not less than five, being subscribers to the stock, may organize themselves into a corporation for the purpose of constructing, building, acquiring, owning, operating and maintaining toll roads within this State by complying with the requirements of this subdivision. No corporation, except one chartered under the laws of this State, shall be authorized or permitted to construct, build, operate, acquire, own or maintain any toll road within this State.

[Acts 1925, S.B. 84.]

Art. 1449. Charter

The persons proposing to form a toll road corporation shall adopt and sign articles of incorporation, which shall contain, in addition to the general requirements, the following:

1. The terminal points, and the intermediate counties through which it is intended to construct the toll road;
2. The names and places of residence of the several persons forming the association for incorporation; and
3. In what officers the management and control of the corporation shall be vested.

[Acts 1925, S.B. 84.]

Art. 1450. Examination

The articles of incorporation, when so prepared, adopted and signed, shall be submitted to the Attorney General, who shall carefully examine the same; and, if he finds them to be in accordance with the provisions of this subdivision, 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. 1451. Registration

When said articles have been examined and certified, the same shall be filed in the office of the Secretary of State, accompanied by the affidavit of at least three of the directors named in such articles. Such affidavit shall state that the entire amount of the capital stock of such proposed corporation has been in good faith subscribed, and that fifty 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 affidavit and articles 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. 1452. Duration

No toll road corporation shall be formed to continue more than fifty years in the first instance, but such corporation may be renewed from time to time, for periods not longer than fifty years, in the manner provided for the renewal of railroad corporations.

[Acts 1925, S.B. 84.]

Art. 1453. Charter Amendments

Any toll road corporation may amend or change its articles of incorporation in the manner provided by law for railroad corporations.

[Acts 1925, S.B. 84.]

Art. 1454. Powers

Every toll road corporation organized hereunder shall have the right to construct, build, acquire, own, operate and maintain toll roads between any points within this State.

[Acts 1925, S.B. 84.]

Art. 1455. Use of State Lands

Every such corporation shall have the right of way for its line of road through and over any land 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. 1456. Private Lands

Every toll road corporation shall have the right to cause such examination and survey for its proposed road to be 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, but subject to responsibility for all damage that may be occasioned thereby.

[Acts 1925, S.B. 84.]

Art. 1457. Road Construction

Every 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 road, and to cut down any standing trees that may be in danger of falling upon or obstructing such road, making compensation in the manner provided by law.

[Acts 1925, S.B. 84.]

Art. 1458. Railroad Crossings

Every such corporation shall have the right to construct its road across any railroad, street railroad or interurban line within this State, which it

may intersect or touch; provided that it shall properly fence such crossings, and restore, in other respects, the property thus intercepted or crossed, to its former state.

[Acts 1925, S.B. 84.]

Art. 1459. Public Way Crossings

Every such corporation shall have the right to construct its own road across any stream of water, water course, street, highway, plank road, turnpike or canal, which the route of said road 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 crossings in repair.

[Acts 1925, S.B. 84.]

Art. 1460. Openings

Every such corporation which may fence its right of way, may be required to make openings or crossings through its fence and over its roadbed every five miles thereof, in the manner provided by law with reference to railroad corporations.

[Acts 1925, S.B. 84.]

Art. 1461. Culverts, Etc.

In no case shall any toll road corporation construct its road without first constructing the necessary culverts or sluices, as the natural lay of the land requires, for the necessary drainage thereof.

[Acts 1925, S.B. 84.]

Art. 1462. Obstruction of Streams

Nothing in this chapter shall be construed to authorize the erection of any bridge or any other obstruction across or over any stream of 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 of water.

[Acts 1925, S.B. 84.]

Art. 1463. Eminent Domain

Every toll road corporation shall have and enjoy all of the rights, privileges and immunities conferred by and be subject to each provision of the law relating to the exercise of the right of eminent domain.

[Acts 1925, S.B. 84.]

Art. 1464. Rules and Rates

Every toll road corporation shall have the power to promulgate, by its board of directors, all necessary and reasonable rules and regulations relating to the manner in which traffic shall move over any toll road operated by it, and to refuse the use of

such road to any person who shall fail or refuse to abide by such rules and regulations; and shall be empowered to fix and charge tolls for the use of such roads; provided, that such rules and regulations shall not be contrary to law, and that the rate to be charged for each class of vehicle shall be the same to all in each of such classes.

[Acts 1925, S.B. 84.]

Art. 1465. Use of Road

No such corporation shall have the right arbitrarily to refuse the use of such road to any person who shall offer to pay the regular toll therefore, except that such corporation shall be authorized to refuse to permit such road to be used by any vehicle which shall render the same unduly hazardous to the patrons of said road or damaging to the surface thereof, or to any person who shall fail or refuse to abide by the reasonable and necessary traffic regulations promulgated by such corporation.

[Acts 1925, S.B. 84.]

CHAPTER TWELVE. BRIDGES, FERRIES AND CAUSEWAYS

1. CAUSEWAYS

Art.

- 1466. Authority to Build.
- 1467. Statement of Location.
- 1468. Priority.
- 1469. Condemnation of Approaches.
- 1470. Land Under Water.
- 1471. Lease of Right of Way.
- 1472. Lessee May Issue Bonds.
- 1473. Causeway Corporations.

2. BRIDGES AND FERRIES

- 1474. Bridge Charter.
- 1475. Rights of Corporation.
- 1476. Toll Rate.
- 1477. Owner's Liability.

1. CAUSEWAYS

Art. 1466. Authority to Build

Any person, corporation or association of persons, hereinafter called the owner, may purchase, build, construct, own, maintain and operate a combination bridge, dam, dike, causeway and roadway across any arm of the Gulf of Mexico or inlet thereof, or any of the saltwater bays, wholly within the limits of this State, to provide a causeway, roadway or highway for vehicles, teams, pedestrians, railroads, and for every character of inland transportation.

[Acts 1925, S.B. 84.]

Art. 1467. Statement of Location

Within ninety days after the commencement of construction of such structure, said owner shall file for record with the clerk of the county where the

greater part of such structure is situated, a sworn statement showing the location of said proposed structure, the name of the same, the size of the same, the name of the stream, bay or arm of the gulf or inlet thereof, or salt water bay over which it is to be built, the time when the work was commenced and the name of the owner, together with a map showing the location of said structure.

[Acts 1925, S.B. 84.]

Art. 1468. Priority

The claimant's right to build said structure will relate back to the time of so filing said statement and map, and the first in time shall be the first in right. The filing of said statement and map shall be considered as taking "formal action."

[Acts 1925, S.B. 84.]

Art. 1469. Condemnation of Approaches

Said claimant may acquire by purchase or by the exercise of the right of eminent domain, all necessary approaches to said structure that said claimant deems necessary.

[Acts 1925, S.B. 84.]

Art. 1470. Land Under Water

The land under water to be occupied by such structure and approaches thereto is hereby granted absolutely to said claimant, and five hundred feet more on each side of such structure is also granted with the right only to dredge therefrom or beyond same for material for causeways if required in construction and maintenance.

[Acts 1925, S.B. 84.]

Art. 1471. Lease of Right of Way

Such owner may lease the right of way over said structure to cities and towns for public utilities owned and operated by them, and to corporations for the constructions by such corporations of railroad tracks over which steam and electric trains and cars may be operated for the transportation of freight and passengers; such right not to be granted in such way as to obstruct or interfere with the use of such structure for pedestrians, teams and vehicles, or to permit a monopoly. Said lease to railroad corporations shall be for such time and on such terms and conditions as the Railroad Commission of Texas may prescribe. Said railroad companies shall only charge for the use of said tracks as a part of the mileage according to statutory rates and the general laws of Texas.

[Acts 1925, S.B. 84.]

Art. 1472. Lessee May Issue Bonds

Any corporation so contracting for the right of way over any part of said structure shall have the right to make and enter into any contract with said

owner subject to the approval of the Railroad Commission, for the payment to said owner of all sums of money due thereunder, and for this purpose may issue and sell its bonds to the extent of the amount of such corporation's obligations to the said owner. No such bonds shall be issued by any railroad company or other corporation without first obtaining the permission, order and approval of the Railroad Commission.

[Acts 1925, S.B. 84.]

Art. 1473. Causeway Corporations

Corporations may be formed and chartered under the provisions of this law and of this title for the purposes stated in article 1466 hereof. All such corporations shall have full power and authority to make contracts with other persons or corporations conveying to said persons or corporations the right of easement or user of any portion of any such structure, and shall have full power and authority to charge, demand and receive reasonable and just tolls and charges for the use of said portions of said bridge, causeway or roadway, and the same shall be equal, just and uniform to all persons, corporations, cities and towns as herein provided, without discrimination as to the amount charged or delay in handling same. Any such corporation shall be subject to the regulation and control of the Railroad Commission as to all the powers and provisions of this law.

[Acts 1925, S.B. 84.]

2. BRIDGES AND FERRIES

Art. 1474. Bridge Charter

The charter of a bridge or ferry company, in addition to the general information required by law, shall state the stream intended to be crossed by the bridge or ferry.

[Acts 1925, S.B. 84.]

Art. 1475. Rights of Corporation

Whenever any person shall file with the Secretary of State any article of association for the erection and maintenance of a bridge or ferry, it shall not be lawful for any other toll-bridge or toll-ferry, to be established on the same stream within the limits specified in said article; provided, that said limits shall not extend more than three miles above and three miles below said bridge or ferry. This article shall not be construed to prohibit bridges and ferries at the crossings of any road on such stream within such limits, declared, either before or after the erection of such bridge or ferry, to be a public road by the commissioners court of the county in which such crossing is situated.

[Acts 1925, S.B. 84.]

Art. 1476. Toll Rate

All charges or tolls for crossing any bridge or ferry shall be regulated by the commissioners court by an order made at a regular term, and spread upon the minutes of said court, as provided in the case of other bridges and ferries.

[Acts 1925, S.B. 84.]

Art. 1477. Owner's Liability

All persons or corporate companies owning any toll bridge or ferry shall be liable for all damages caused by neglect, delay or the insufficiency of their bridge or ferry boat, which damages may be recovered by suit therefor.

[Acts 1925, S.B. 84.]

CHAPTER THIRTEEN. CHANNEL AND DOCK [REPEALED]

Arts. 1478 to 1482. Repealed by Acts 1961, 57th Leg., p. 841, ch. 377, § 14, eff. Aug. 28, 1961

CHAPTER FOURTEEN. DEEP WATER [REPEALED]

Arts. 1483 to 1494. Repealed by Acts 1961, 57th Leg., p. 841, ch. 377, § 14, eff. Aug. 28, 1961

CHAPTER FIFTEEN. OIL, GAS, SALT, ETC. [REPEALED]

Arts. 1495 to 1507. Repealed by Acts 1955, 54th Leg., p. 239, ch. 64, art. 9.16

CHAPTER SIXTEEN. WASTE WATER CORPORATIONS

Art.

1508. Purposes.

1509. Powers.

1510. Condemnation.

1511. Services.

1512. Ownership of Stock.

Art. 1508. Purposes

Corporations may be created for the purpose of gathering, storing, and impounding water containing salt or other substances [produced] in the drilling and operation of oil and other wells, and to prevent the flow thereof into streams at times when the latter may be used for irrigation.

[Acts 1925, S.B. 84.]

Art. 1509. Powers

Such corporations, in addition to the general powers conferred by law upon private corporations, may acquire, own, and operate ditches, canals, pipe lines, levees, reservoirs, and their appliances appropriate

for the gathering, impounding or storage of such water and for the protection of such reservoirs from inflow or damage by surface waters.

[Acts 1925, S.B. 84.]

Art. 1510. Condemnation

Such corporation shall have power to condemn lands and rights necessary for the purposes of such corporation; and also to cross with their ditches, canals, and pipe lines under any highways, canals, pipe lines, railroads, and tram or logging roads; conditioned that the use thereof be not impaired longer than essential to the making of such crossings. No right is conferred to pass through any cemetery or under any residence, school house or other public building, nor to cross any street or alley of any incorporated city or town without the consent of the authorities thereof.

[Acts 1925, S.B. 84.]

Art. 1511. Services

In the localities in which they operate and to the extent of the facilities provided, such corporations shall serve all producers of such waters in the gathering, impounding, and storage of such waters, in proportion to the needs of such producers at fair and reasonable charges, and without discrimination between such producers under like conditions.

[Acts 1925, S.B. 84.]

Art. 1512. Ownership of Stock

Corporations interested in the proper disposition of such waters may subscribe for, own, and vote stock in the corporations which may be created hereunder.

[Acts 1925, S.B. 84.]

CHAPTER SEVENTEEN. TRUST COMPANIES AND INVESTMENTS

Art.

1513. Trust Companies.

1513a. Creation of Trust Company; Purposes.

AGRICULTURAL FINANCE CORPORATIONS

1514 to 1519. Repealed.

LOAN AND BROKERAGE COMPANIES

1520 to 1524a-1. Repealed.

1524b. Housing Corporations Authorized.

1524c. Application for Incorporation.

1524d. Powers; Fees and Taxes.

1524e. Regulation by Municipalities or Counties.

1524f. Rate of Return Restricted.

1524g. Rules and Regulations to be Prescribed and Plans Approved.

1524h. Appeal from Order Fixing Rate of Return.

1524i. Loans from Reconstruction Finance Corporation.

1524j. Anti-trust Laws not Affected.

1524k. Restraining Violation of Orders, Rules or Regulations; Punishment for Violation of Injunction.

Art. 1513. Trust Companies

Every trust company organized under the laws of the State with a capital of not less than five hundred thousand dollars shall, in addition to all other powers conferred by law, have the power to purchase, sell, discount and negotiate with or without its endorsement or guaranty, notes, drafts, checks, bills of exchange, acceptances, including bankers' acceptances, cable transfers and other evidences of indebtedness; to purchase and sell, with or without its endorsement or guaranty, stocks, bonds, securities, including the obligations of the United States or of any States thereof; to issue debentures, bonds and promissory notes, to accept bills or drafts drawn upon it, but in no event having liabilities outstanding thereon at any one time exceeding five times its capital stock and surplus; provided, however, that with the consent in writing of the Banking Commissioner they may have outstanding at any one time ten times the capital stock and surplus; and generally, to exercise such powers as are incidental to the powers conferred by this article.

[Acts 1925, S.B. 84.]

Art. 1513a. Creation of Trust Company; Purposes**Creation; Purposes**

Sec. 1. Except as provided by Section 6 of this Act, trust companies may be created, and any corporation, however created, may amend its charter in compliance herewith for the following purpose: to act as trustee, executor, administrator, or guardian when designated by any person, corporation, or court to do so, and as agent for the performance of any lawful act, including the right to receive deposits made by agencies of the United States of America for the authorized account of any individual, and to act as attorney-in-fact for reciprocal or inter-insurance exchange, and to lend and accumulate money without banking privileges, when licensed under the provisions of Subtitle II of Title 79, Revised Civil Statutes of Texas, 1925, as amended.¹

¹ Article 5069-2.01 et seq.

Supervision of Banking Commissioner; Annual Statement; Examinations; Fees; Penalties

Sec. 2. (a) Such corporations shall be subject to supervision by the Banking Commissioner of Texas and shall file with the Banking Commissioner of Texas on or before February 1 of each year a statement of its condition on the previous December 31, in such form as may be required by the Banking Commissioner, showing under oath its assets and liabilities, together with a fee of \$50 for filing; which statement when so filed shall not be open to the public but shall be for the information of the Banking Commissioner and his employees. The Banking Commissioner may, for good cause shown, extend the time for filing such statement for not

more than 60 days. The Banking Commissioner, or his authorized assistants or representative, shall not make public the contents of said statement, or any information derived therefrom, except in the course of some judicial proceeding in this state.

(b) The Banking Commissioner of Texas shall have authority to examine or cause to be examined each such corporation annually or more often if he deems it necessary. Such corporation shall pay the actual traveling expenses, hotel bills, and all other actual expenses incident to such examination, the equitable or proportionate cost of the maintenance and operation of the Banking Department, and the enforcement of this Act. The Banking Commissioner annually shall determine the fee. If such corporation has not sold in Texas, and does not offer for sale or sell in Texas, any of its securities which have been registered or with respect to which a permit authorizing their sale has been issued under the Securities Act,¹ as presently in force or hereafter amended, the Banking Commissioner of Texas, in lieu of an examination, shall accept the financial statement filed by such corporation pursuant to the first paragraph of this Section. Such fees, together with all other fees, penalties and revenues collected by the Banking Department, shall be retained by the department and shall be expended only for the expenses of the department.

(c) If any such corporation shall fail to comply with the requirements of the first paragraph of this Section in the manner and within the time required, such failure shall subject such corporation to a penalty of not less than \$200 nor more than \$1,000, which shall be collected at the suit of the Attorney General if not paid within 30 days after February 1 of each year. A second failure to file such statement, as so required, shall be grounds for forfeiture of the charter of such corporation at the suit of the Attorney General upon request of the Banking Commissioner of Texas.

(d) Refusal on the part of any such corporation to submit to an examination by the Banking Commissioner of Texas, or his representatives, or the withholding of information from the Banking Commissioner of Texas, or his representatives, shall constitute grounds for forfeiture of the charter of such corporation at the suit of the Attorney General upon the request of the Banking Commissioner of Texas.

¹ Article 581-1 et seq.

Action by Banking Commissioner; Officers and Directors; Cease and Desist; Removal; Review

Sec. 2A. (a) With regard to a trust company, the Banking Commissioner of Texas may take action in accordance with Article 12, Chapter IV, The Texas Banking Code of 1943, as amended (Article 342-412, Vernon's Texas Civil Statutes), as if the trust company were a state bank if the commissioner finds that an officer, director, or employee of the

trust company, or the trust company itself acting through any authorized person:

- (1) violates any law or rule applicable to the trust company;
- (2) refuses to comply with any law or rule applicable to the trust company;
- (3) wilfully neglects to perform his or its duties or commits a breach of trust or of fiduciary duty;
- (4) commits any fraudulent or questionable practice in the conduct of the trust company's business that endangers the trust company's reputation or threatens its solvency;
- (5) refuses to submit to examination under oath;
- (6) conducts business in an unsafe or unauthorized manner; or
- (7) violates any conditions of the trust company's charter or of any agreement entered with the Banking Commissioner or the Banking Department.

(b) An individual or trust company against which action is taken under this section may request review of that action in accordance with Article 12, Chapter IV, The Texas Banking Code of 1943, as amended (Article 342-412, Vernon's Texas Civil Statutes), as if the trust company were a state bank.

Action by Banking Commissioner; Supervision and Conservatorship; Review

Sec. 2B. (a) With regard to a trust company, the Banking Commissioner of Texas may take action in accordance with Article 1a, Chapter VIII, The Texas Banking Code of 1943 (Article 342-801a, Vernon's Texas Civil Statutes), as if the trust company were a state bank if:

- (1) it appears to the commissioner that the trust company is in a condition that would be an unsafe condition for a state bank under Article 1a and the trust company's condition renders the continuance of its business hazardous to the public or to the shareholders or creditors of the trust company;
- (2) it appears to the commissioner considering Article 1a that the trust company has exceeded its powers;
- (3) the trust company has failed to comply with the law; or
- (4) the trust company gives written consent to supervision or conservatorship under this section.

(b) A trust company against which action is taken under this section may request review of that action in accordance with Article 1a, Chapter VIII, The Texas Banking Code of 1943 (Article 342-801a, Vernon's Texas Civil Statutes), as if it were a state bank.

Compliance with Securities Act

Sec. 3. Any securities issued or sold by such companies shall be issued and sold in compliance with all of the provisions of the Securities Act, as amended, as it now exists or may hereafter be amended.

Paid-in Capital

Sec. 4. Any such company must have a fully paid-in capital of not less than \$500,000.

Demand or Time Deposits

Sec. 5. Any such company shall not accept demand or time deposits, except as hereinabove provided.

Registered Bank Holding Companies, Banks, or Trust Companies Whose Operations are Principally Outside State; Foreign Corporations

Sec. 6. (a) The provisions of this Act shall apply to any registered bank holding company, bank, or trust company whose operations are principally conducted outside this state, and any foreign corporations which were authorized to transact business in this state under a certificate of authority issued before September 1, 1979, which authorizes such corporation to exercise in this state all or any of the purposes, powers or authorities referred to in Section 1 hereof. Provided, however, nothing in this Act shall be construed as precluding any resident of the State of Texas from establishing a trust relationship with any state or national bank or trust company whether such state or national bank or trust company is or is not domiciled in the State of Texas.

(b) A registered bank holding company, bank, or trust company whose operations are principally conducted outside this state or a foreign corporation, the operations of which are principally conducted outside this state, either directly, indirectly, or through a foreign or domestic subsidiary or affiliate, may not:

- (1) do business as a trust company in this state;
- (2) acquire or control any trust company in this state that is chartered under the laws of this state; or
- (3) exercise in this state any of the powers referred to in Section 1 of this Act except as provided by Section 105A, Texas Probate Code, as amended.

(c) Every such registered bank holding company or foreign corporation that before September 1, 1979, was authorized to transact business in the state shall be subject to the examination of the Banking Commissioner of Texas in the same manner and under the same terms and conditions as are domestic corporations. In lieu of such examinations, the Banking Commissioner of Texas may, in his discretion, accept reports of examination made

by the supervising authority of the state in which the home office of such foreign corporation is domiciled. Failure to comply with this Act shall constitute grounds for revocation of the certificate of authority of such foreign corporation to transact business in this state in an action filed by the Attorney General upon the request of the Banking Commissioner of Texas.

Registered Bank Holding Companies, Banks, Trust Companies, or Foreign Corporations; Control over Trust Company

Sec. 6A. (a) A registered bank holding company, bank, trust company, or foreign corporation has control over a trust company if:

(1) it directly or indirectly, such as by acting through one or more persons, corporations, partnerships, business trusts, associations, or similar organizations, owns, controls, or has power to vote 25 percent or more of the shares of any class of voting securities of the trust company;

(2) it controls in any manner the election of a majority of the directors of the trust company; or

(3) the Banking Commissioner of Texas determines that the registered bank holding company, bank, or trust company or foreign corporation directly or indirectly exercises a controlling influence over the management or policies of the trust company.

(b) The operations of a registered bank holding company, bank, or trust company are principally conducted outside this state if:

(1) in the case of a registered bank holding company:

(A) the largest amount of the total deposits of all banks controlled by the registered bank holding company is held outside this state; or

(B) the largest amount of the total trust assets held by all banks or trust companies controlled by the registered bank holding company is held or administered outside this state;

(2) in the case of a bank, the largest amount of its total deposits is held outside this state; and

(3) in the case of a trust company, the largest amount of its total trust assets is held or administered outside this state.

Supplementary Laws; Antitrust Laws

Sec. 7. The General Laws for incorporation and governing of corporations and the provisions of Article 1513, Revised Civil Statutes of Texas, 1925, and the provisions of the Texas Business Corporation Act shall supplement the provisions of this Act and shall apply to such trust companies to the extent that they are not inconsistent herewith; provided, the provisions of Article 2.01A¹ permitting a corporation to have more than one purpose shall not

apply. The power and authority herein conferred shall in no way affect any of the provisions of the antitrust laws of this state.

¹ Business Corporation Act, art. 2.01, § A.

[Acts 1957, 55th Leg., p. 1162, ch. 388. Amended by Acts 1967, 60th Leg., p. 1730, ch. 658, § 1, eff. June 17, 1967; Acts 1975, 64th Leg., p. 1368, ch. 523, §§ 1, 2, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1504, ch. 649, §§ 1 to 3, eff. Sept. 1, 1979; Acts 1981, 67th Leg., p. 415, ch. 174, § 1, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 2927, ch. 499, § 5, eff. Sept. 1, 1983.]

Sections 2 and 3 of the 1967 amendatory act provided:

"Sec. 2. Chapter 165, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 1524a, Vernon's Texas Civil Statutes), is repealed.

"Sec. 3. If any word, phrase, clause, sentence or Section 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."

AGRICULTURAL FINANCE CORPORATIONS

Arts. 1514 to 1519. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Section 1 of 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.

LOAN AND BROKERAGE COMPANIES

Arts. 1520 to 1524. Repealed by Acts 1931, 42nd Leg., p. 280, ch. 165, § 11

Art. 1524a. Repealed by Acts 1967, 60th Leg., p. 1730, ch. 658, § 2, eff. June 17, 1967

See, now, article 1513a and notes thereunder.

Art. 1524a-1. Repealed by Acts 1963, 58th Leg., p. 550, ch. 205, § 30, eff. Aug. 23, 1963

See, now, article 5069-3.01 et seq.

Art. 1524b. Housing Corporations Authorized

Corporations may be formed wholly for the purpose of providing housing for families of low income and/or for reconstruction of slum areas, provided such corporations are regulated by state or municipal law, as hereinafter provided as to rents, charges, capital structure, rate of return and areas and methods of operation.

[Acts 1932, 42nd Leg., 3rd C.S., p. 107, ch. 42, § 1.]

Art. 1524c. Application for Incorporation

Applications for charters for corporations, the creation of which are authorized under the provisions of this Act, in addition to requirements now prescribed by law, must be accompanied by a certificate executed by the officials of the governing body of the municipality in which said corporation contemplate owning or operating any properties certifying that the capital structure thereof and the

plans and specifications of the proposed building has the approval of such governing body, provided, that where said corporation contemplates the owning or operating of properties situated outside the corporate limits of any organized town, city or village, then the certification herein referred to shall be executed by the Commissioners' Court of any county in which it is contemplated to own and/or operate properties within the scope of this Act. Such certificate shall not be binding upon the Secretary of State who shall proceed to file or refuse to file the charter in accordance with the provisions of existing laws.

[Acts 1932, 42nd Leg., 3rd C.S., p. 107, ch. 42, § 2.]

Art. 1524d. Powers; Fees and Taxes

Any corporation organized under the provisions of this Act shall have, except as herein provided, all the powers of private domestic corporations which have been heretofore organized under the provisions of the laws of the State of Texas, and shall pay all fees and taxes which are required to be paid by private domestic corporations organized and/or existing under the laws of the State of Texas.

[Acts 1932, 42nd Leg., 3rd C.S., p. 107, ch. 42, § 3.]

Art. 1524e. Regulation by Municipalities or Counties

The rents, charges, capital structure, rate of return and areas and method of operation of any corporation organized under the provisions of Section 1 hereof¹ shall be regulated, as hereinafter provided, by the governing body of any municipality or county where the properties to be owned or operated are situated outside the corporate limits of any organized town, city or village in which said corporation owns and operates any property. Should any such corporation own and operate properties in more than one municipality, the governing body of each municipality or county, where the properties to be owned or operated are situated outside the corporate limits of any organized town, city or village in which property of the corporation is situated, shall regulate in the manner prescribed by this Act the rents, charges, rate of return and area and method of operation of the property located within the territorial limits of such municipality or county, where the properties to be owned or operated are situated outside the corporate limits of any organized town, city or village, provided the governing body of a county shall not have the jurisdiction of regulation of property of such corporation situated within the corporate limits of a town, village, or city.

[Acts 1932, 42nd Leg., 3rd C.S., p. 107, ch. 42, § 4.]

¹ Article 1524b.

Art. 1524f. Rate of Return Restricted

The governing body fixing the rate of return for a corporation organized under the provisions of Section 1 of this Act¹ shall not fix such rates of return

to yield a net amount in excess of eight (8%) per cent upon the invested capital of such corporation.

[Acts 1932, 42nd Leg., 3rd C.S., p. 107, ch. 42, § 5.]

¹ Article 1524b.

Art. 1524g. Rules and Regulations to be Prescribed and Plans Approved

Such governing body may establish rules and regulations governing its procedure for hearings in fixing or amending orders or ordinances fixing the rents, charges, rate of return and areas and methods of corporations organized under the provisions of Section 1 hereof,¹ and before any building is erected by such corporation, the detailed plans and specifications thereof, must be approved by the governing body of the municipality or county, where the properties to be owned or operated are situated outside the corporate limits of any organized town, city or village in which such building is to be erected.

[Acts 1932, 42nd Leg., 3rd C.S., p. 107, ch. 42, § 6.]

¹ Article 1524b.

Art. 1524h. Appeal from Order Fixing Rate of Return

Any corporation organized and existing under and by virtue of provisions of Section 1 hereof,¹ which shall be dissatisfied with any rents, charges, rate of return and area and method of operation which is fixed or may be fixed or may be changed by any governing body, may, by giving to such governing body ten (10) days notice by registered mail of its intention thereof, appeal to any district court of the county wherein the property which is affected is situated. The appeal shall be perfected by filing suit in the district court of the county in which the property is situated within ten (10) days after the giving of such notice, and the filing of such suit shall suspend the order, rule, regulation, or ordinance from which the appeal is perfected. The municipality or county, where the properties to be owned or operated are situated outside the corporate limits of any organized town, city or village shall be defendant in said suit. The trial shall be de novo, and Court, upon a hearing, shall, by its judgment, regulate the rents, charges, rate of return, areas and method of operation of the corporation.

[Acts 1932, 42nd Leg., 3rd C.S., p. 107, ch. 42, § 7.]

¹ Article 1524b.

Art. 1524i. Loans from Reconstruction Finance Corporation

Any corporation created under the provisions of this Act, in addition to the powers herein granted, shall have full power and authority to do all things necessary to secure loans from the Reconstruction Finance Corporation under the rules and regulations prescribed by said Reconstruction Finance Corporation.

[Acts 1932, 42nd Leg., 3rd C.S., p. 107, ch. 42, § 8.]

Art. 1524j. Anti-trust Laws not Affected

Provided that nothing in this Act shall in anywise affect or nullify the Anti-trust laws of this State.

[Acts 1932, 42nd Leg., 3rd C.S., p. 107, ch. 42, § 9.]

Art. 1524k. Restraining Violation of Orders, Rules or Regulations; Punishment for Violation of Injunction

If any agent, servant, officer or employee of any corporation created under the provisions of this Act shall wilfully violate any order, rule, regulation or ordinance fixing rents, charges, rate of return, areas and method of operation, the District Court of the County in which the property of such corporation is situated, upon application of the governing body of the municipality or county, where the properties to be owned or operated are situated outside the corporate limits of any organized town, city or village wherein the corporation owns property or upon application of any Labor Inspector employed by the State of Texas when authorized to so act by the Commissioner of Labor Statistics of the State of Texas, may issue during its term or in vacation a temporary writ of injunction restraining such agents, servants, officers or employees from any violation of such order, rule, regulation or ordinance and which temporary writ of injunction may be made permanent upon notice and hearing in the manner now provided by law. No bond shall be required before issuing any such temporary or permanent injunction and if any such injunction is violated by the agents, servants, officers or employees of said corporation, the Court, in addition to its power to punish for contempt, may order that the building of such corporation shall not be used or occupied for any period not to exceed one year but the Court shall permit said building to be occupied or used if the owner, lessee, tenant or occupant thereof shall give bond with sufficient surety to be provided by the Court in the sum of not less than Five Hundred (\$500.00) Dollars nor more than One Thousand (\$1,000.00) Dollars, payable to the Judge of said Court, conditioned that said corporation, its agents, servants, officers or employees will thereafter comply with the orders, rules, regulations or ordinances which have been or may be promulgated, fixing the rents, charges, or rate of return, areas and methods of operation of said corporation and that it will pay all fines and costs that may be assessed in contempt proceedings against its agents, servants, officers and employees for the violation of any writ of injunction existing, or which may thereafter be issued.

[Acts 1932, 42nd Leg., 3rd C.S., p. 107, ch. 42, § 10.]

CHAPTER EIGHTEEN. MISCELLANEOUS**Art.**

1525. Drainage.

1526. Irrigation and Waterpower.

Art.

1527. International Trading Corporations.

1527a. International Commerce Development Corporation; Foreign Trade Zone.

1528. Ice Companies.

1528a. State Housing Law.

1528b. Electric Cooperative Corporation Act.

1528c. Telephone Cooperative Act.

1528d. Automobile Club Services Act.

1528e. Professional Corporations.

1528f. Professional Association Act.

1528g. Business Development Corporations.

1528h. Dealing in Acceptances.

1528i. Mutual Trust Investment Company Act.

1528j. Health Facilities Development Act.

1528k. Agricultural Development Act.

Art. 1525. Drainage

Corporations chartered for the purpose of constructing, maintaining and operating canals, drains and ditches outside of the corporate limits of cities and towns in any county in Texas shall:

1. Have power for the purpose of drainage, to acquire lands for the purpose of its business or in payment of stock or drainage rights, and to hold and dispose of such lands and all other property.

2. Alienate within fifteen years from the date of acquiring same all lands acquired by such corporations, subject to judicial forfeiture, except lands used for the construction, maintenance and operation of drains, ditches and laterals.

3. Have power to make contracts for the permanent drainage of any tract of land and the charges therefor, said charges to be subject to the control of the Legislature; and the rights therein shall be secured by a lien expressly given upon the lands, other than homesteads, benefited by said drain or canal.

4. Have the right to borrow money for the construction, maintenance and operation of its ditches, canals and laterals, and to issue bonds and mortgage its franchises to secure the payment of any debts contracted for the same.

5. Report to the commissioners court of the county wherein constructed, all drains and canals so constructed by such corporations, such report to be approved by said court.

[Acts 1925, S.B. 84.]

Art. 1526. Irrigation and Waterpower

Corporations organized to construct, maintain and operate canals, ditches, flumes, feeders, laterals, dams, reservoirs, lakes and wells, and for conserving, storing, conducting and transferring water to all persons entitled to the use of same for irrigation, mining, milling, manufacturing, the development of power, to cities and towns for waterworks, and for stockraising, shall have power to acquire lands by voluntary donation or purchase in payment of stock or bonds or water rights; and to hold, improve,

subdivide and dispose of all such land and other property. Such corporations may elect directors or trustees to hold office for a period of three years, and may provide for the election of one-third in number thereof each year.

[Acts 1925, S.B. 84.]

Art. 1527. International Trading Corporations

Corporations created for the purpose of engaging in international trading and the purchase and sale of the products of the farm, ranch, orchard, mine and forest shall be empowered to pledge, borrow, hypothecate and receive in trust for the purpose of sale any and all products of the farm, ranch, and orchard, and shall be authorized to buy, sell and exchange raw products of the farm, ranch, orchard, mine and forest, and to take in payment therefor finished products of whatever kind and character that they may determine at a fair, equitable and just valuation. Such corporations shall have power to charter, lease, construct or purchase necessary vessels, ships, docks, wharves, and warehouses for the conduct of their business; to pool products of the farm in the sale of same; to hypothecate or pledge the credit of such corporations for the products so received under contract for the necessary funds with which to market same; to borrow money as other business corporations and to lend the same upon products that they may be engaged in the sale of, either as owner, agent, consignee, or commission merchant. They shall have generally and specially all the rights, powers and privileges belonging to a corporation engaging in international trading. Such corporations shall have authority to receive in payment of capital stock, manufacturing establishments, and the stocks and bonds of same at a fair and just valuation, and to so receive the products of the farm, ranch and orchard. Whenever property is received in payment for capital stock, the Secretary of State shall appoint a board of appraisers who are familiar with the valuations of such property so taken in payment for capital stock to appraise same and furnish him with a sworn statement of the valuations of the property so taken in payment for capital stock. On receipt of same he shall approve, file and record the charter of such corporation. A majority of the stock shall in all instances be owned by citizens of the United States, and a majority of the officers and directors thereof shall in all instances be citizens of the United States and of this State. Nothing in this article shall prevent citizens of foreign countries from becoming stockholders in such corporations, but the control of such corporations shall never in any instance be vested in citizens of other countries than the United States. Violation of any provision herein as to the control of stock of such corporation shall be sufficient for the Secretary of State to cancel the charter of said

corporation and same shall be placed in the hands of a receiver as provided by law.

[Acts 1925, S.B. 84.]

Art. 1527a. International Commerce Development Corporation; Foreign Trade Zone

The International Commerce Development Corporation, organized and incorporated under the laws of the State of Texas, with offices at Fort Worth, Tarrant County, Texas, is authorized to apply for and accept a grant to establish, operate and maintain a foreign trade zone at the Fort Worth Port of Entry, and other sub-zones, subject to the requirements of federal law and regulations of the Foreign Trade Zones Board.

[Acts 1969, 61st Leg., p. 581, ch. 196, § 1, eff. May 14, 1969.]

Art. 1528. Ice Companies

Corporations organized or chartered under the laws of this State for the manufacture of ice shall also be authorized to engage in and transact the business of buying, selling and refrigerating poultry and poultry products, and buying, selling, canning and refrigerating fruits, produce and dairy products.

[Acts 1925, S.B. 84.]

Art. 1528a. State Housing Law

Short Title

Sec. 1. This Act shall be known as the "State Housing Law."

State Agencies and Instrumentalities

Sec. 2. It is hereby declared that it is necessary in the public interest to make provision for housing for families of low income, and that, the providing of such housing being now otherwise impossible, it is essential that provision be made for the investment of private and public funds at low interest rates, the acquisition at fair prices of adequate parcels of land and the construction of new housing facilities under public supervision in accord with proper standards of sanitation and safety, at a cost which will permit their rental or sale at prices which families of low income can afford to pay. Therefore, there are created and established the agencies and instrumentalities hereinafter prescribed which are declared to be the agencies and instrumentalities of the state for the purpose of attaining the ends herein recited, and their necessity in the public interest is hereby declared a matter of legislative determination.

State Housing Board

Sec. 3. There is hereby created a State Board of Housing of the State of Texas. The Texas Rehabili-

tation and Relief Commission is hereby designated as the State Housing Board of the State of Texas, and shall perform all duties imposed by the Legislature as hereinafter provided: and insofar as its responsibilities and duties have to do with the State Housing Law the Texas Rehabilitation and Relief Commission shall continue to exist as the State Housing Board until its duties and obligations shall have ceased to exist.

Definition

Sec. 4. Definition: The term board as used in this Act shall mean the Texas Rehabilitation and Relief Commission.

Conditions of Approval of Housing Projects by Board

Sec. 5. No housing project proposed by a limited dividend housing corporation incorporated under this Act shall be undertaken, and no building or other construction shall be placed under contract or started without the approval of the board. No housing project shall be approved by the board unless:

(a) It shall appear practicable to rent or sell the housing accommodations to be created at prices not exceeding those prescribed by the board. No such project shall be approved in contravention of any zoning or building ordinance in effect in the locality in which designated areas are located.

(b) There shall be submitted to the board a financial plan in such form and with such assurances as the board may prescribe to raise the actual cost of the lands and projected improvements by subscriptions to or the sale of the stock, income debentures and mortgage bonds of such corporation. Whenever reference is made in this Act to cost of projects or of buildings and improvements in projects, such cost shall include charges for financing and supervision approved by the board and carrying charges during construction required in the project including interest on borrowed, and, where approved by the board, on invested capital.

(c) There shall be such plans of site development and buildings as show conformity to reasonable standards of health, sanitation, safety and provisions for light and air, accompanied by proper specifications and estimates of cost. Such plans and specifications shall not in any case fall below the requirements of the health, sanitation, safety and housing laws of the state and shall meet superior requirements if prescribed by local laws and ordinances.

(d) The corporation agrees to accept a designee of the board of housing as a member of the board of directors of said corporation.

(e) If required by the board, the corporation shall deposit all moneys received by it as proceeds of its mortgage bonds, notes, income debentures, or

stock, with a trustee which shall be a banking corporation authorized to do business in the State of Texas and to perform trust functions, and such trustee shall receive such moneys and make payment therefrom for the acquisition of land, the construction of improvements and other items entering into cost of land improvements upon presentation of draft, check or order signed by a proper officer of the corporation and, if required by the board, countersigned by the said board or a person designated by it for said purpose. Any funds remaining in the custody of said trustee after the completion of the said project and payment or arrangement in a manner satisfactory to the board for payment in full thereof shall be paid to the corporation.

Investigation of Housing Companies

Sec. 6. The board shall have power to investigate into the affairs of limited dividend housing companies, incorporated under this Act, and into the dealings, transactions or relationships of such companies with other persons. Any of the investigations provided for in this Act may be conducted by the board or by a committee to be appointed by the board consisting of one or more members of the board. Each member of the board or a committee thereof shall have power to administer oaths, take affidavits and to make personal inspections of all places to which their duties relate. The board or a committee thereof shall have power to subpoena and require the attendance of witnesses and the production of books and papers relating to the investigations and inquiries authorized in this Act, and to examine them in relation to any matter it has power to investigate, and to issue commissions for the examination of witnesses who are out of the state or unable to attend before the board or excused from attendance.

Powers of Board

Sec. 7. The board is hereby empowered to (a) study housing conditions and needs throughout the state to determine in what areas congested and unsanitary housing conditions constitute a menace to the health, safety, morals, welfare and reasonable comfort of the citizens of the state, (b) prepare programs for correcting such conditions, (c) collect and distribute information relating to housing, (d) investigate all matters affecting the cost of construction or production of dwellings, (e) study means of securing economy in the construction and arrangement of buildings, (f) recommend and approve the areas within which or adjacent to which the construction of housing projects by limited dividend housing companies may be undertaken, and (g) cooperate with local housing officials and planning commissions or similar bodies in cities and other localities in developments of projects they at any time may have under consideration.

Consolidation of Projects

Sec. 8. The board may permit the consolidation of two or more approved projects or the extension or amendment of any approved project or the consolidation of any approved project with a proposed project. In any of these events, the consolidation project shall be treated as an original project, and an application shall be submitted as in the case of an original project and rents may be averaged throughout the consolidated or extended project. The board may likewise permit or decline to permit any limited dividend corporation to organize and operate more than one project or to take over any project heretofore approved by the board and to operate it independently of other projects of the corporation.

Supervision and Regulation of Operation of Housing Companies

Sec. 9. In pursuance of its power and authority to supervise and regulate the operations of limited dividend housing companies incorporated under this Act the board may:

(a) Order any such corporation to make, at its expense, such repairs and improvements as will preserve or promote the health and safety of the occupants of buildings and structures owned or operated by such corporations.

(b) Order all such corporations to do such acts as may be necessary to comply with the provisions of the law, the rules and regulations adopted by the board or by the terms of any project approved by the board, or to refrain from doing any acts in violation thereof.

(c) Examine all such corporations and keep informed as to their general condition, their capitalization and the manner in which their property is constructed, leased, operated or managed.

(d) Either through its members or agents duly authorized by it, enter in or upon and inspect the property, equipment, buildings, plants, offices, apparatus and devices of any such corporation, examine all books, contracts, records, documents and papers of any such corporation and by subpoena duces tecum compel the production thereof.

(e) In its discretion prescribe uniform methods and forms of keeping accounts, records and books to be observed by such companies and to prescribe by order accounts in which particular outlays and receipts shall be entered, charged or credited.

(f) Require every such corporation to file with the board an annual report setting forth such information as the board may require verified by the oath of the President and General Manager or Receiver if any thereof or by the person required to file the same. Such report shall be in the form, cover the period and be filed at the time prescribed by the board. The board may further require specific an-

swers to questions upon which the board may desire information and may also require such corporations to file periodic reports in the form covering the period and at the time prescribed by the board.

(g) From time to time make, amend and repeal rules and regulations for carrying into effect the provisions of this Act.

Maximum Rentals or Purchase Price

Sec. 10. The board shall fix the maximum rental or purchase price to be charged for the housing accommodations furnished by such corporation. Such maximum rental or purchase price shall be determined upon the basis of the actual final cost of the project so as to secure, together with all other income of the corporation, a sufficient income to meet all necessary payments to be made by said corporations, as hereinafter prescribed, and such rental or purchase price shall be subject to revision by the board from time to time. The payments to be made by such corporation shall be (a) all fixed charges, and all operating and maintenance charges and expenses which shall include taxes, assessments, insurance, amortization charges in amounts approved by the board to amortize the mortgage indebtedness in whole or in part, depreciation charges if, when and to the extent deemed necessary by the board; reserves, sinking funds and corporate expenses essential to operation and management of the project in amounts approved by the board. (b) A dividend not exceeding the maximum fixed by this act upon the stock of the corporation allotted to the project by the board. (c) Where feasible in the discretion of the board, a sinking fund in an amount to be fixed by the board for the gradual retirement of the stock, and income debentures of the corporation to the extent permitted by this Act.

Letting, subletting or assignment of leases of apartments in such buildings or structures at greater rentals than prescribed by the order of the board are prohibited and all such leases will be void for all purposes.

Reorganization of Companies

Sec. 11. (1) Reorganization of limited dividend housing companies shall be subject to the supervision and control of the board and no such reorganization shall be had without the authorization of such board.

(2) Upon all such reorganizations the amount of capitalization, including therein all stocks, income debentures and bonds and other evidence of indebtedness shall be such as is authorized by the board which, in making its determination, shall not exceed the fair value of the property involved.

Actions by Board against Housing Companies

Sec. 12. Whenever the board shall be of the opinion that any such limited dividend housing company is failing or omitting, or about to fail or omit to do anything required of it by law or by order of the board and is doing or about to do anything, or permitting anything or about to permit anything to be done, contrary to or in violation of law or of any order of the board, or which is improvident or prejudicial to the interests of the public, the lienholders or the stockholders, it may commence an action or proceeding in the District Court of the county in which the said company is located, in the name of the board for the purpose of having such violations or threatened violations stopped and prevented by mandatory injunction. The board shall begin such action or proceeding by a petition and complaint to the said District Court, alleging the violation complained of and praying for appropriate relief by way of mandatory injunction. It shall thereupon be the duty of the court to specify the time, not exceeding twenty days after service of a copy of the petition and complaint, within which the corporation complained of must answer the petition and complaint.

In case of default in answer or after answer the court shall immediately inquire into the facts and circumstances in such manner as the court shall direct without other or formal pleadings, and without respect to any technical requirements. Such other persons or corporations as it shall seem to the court necessary or proper to join as parties in order to make its order or judgment effective, may be joined as parties. The final judgment in any such action or proceeding shall either dismiss the action or proceeding or direct that a mandatory injunction be issued as prayed for in the petition and complaint or in such modified or other form as the court may determine will afford appropriate relief.

Acquisition of Property for Projects

Sec. 13. When the board shall have approved a project for the construction of housing accommodations presented to it by a limited dividend housing company, such company may undertake the acquisition of the property needed for said project. Such property may be acquired by gift, bequest or purchase or, in the case of limited dividend housing companies.

The board may expressly except from its certificate hereunder any part of the property proposed to be acquired as unnecessary to the plan. The approval by the board of the project shall be deemed in any proceeding to acquire land by appropriation as sufficient evidence of the necessity of the appropriation and a duly certified copy of the certificate of the board shall be conclusive evidence as to the matters lawfully certified therein in any appropriation proceeding.

Incorporation

Sec. 14. Any number of natural persons, not less than three, a majority of whom are citizens of the United States, may become a corporation by subscribing, acknowledging and filing in the office of the Secretary of State, articles of incorporation, hereinafter called "articles," setting forth the information required by the general corporation act of the state, except as herein modified or changed.

(a) The purposes for which a limited dividend housing company is to be formed shall be as follows: To acquire, construct, maintain and operate housing projects when authorized by and subject to the supervision of the board of housing.

(b) The shares of which the capital shall consist shall have a par value.

(c) Articles of incorporation shall contain a declaration that the corporation has been organized to serve a public purpose and that it shall remain at all times subject to the supervision and control of the board or of other appropriate state authority; that all real estate acquired by it and all structures erected by it, shall be deemed to be acquired for the purpose of promoting the public health and safety and subject to the provisions of the state housing law and that the stockholders of this corporation shall be deemed, when they subscribe to and receive the stock thereof, to have agreed that they shall at no time receive or accept from the company, in repayment of their investment in its stock, any sums in excess of the par value of the stock, together with cumulative dividends at the rate of six (6%) per centum per annum, and that any surplus in excess of such amount if said company shall be dissolved, shall revert to the State of Texas.

(d) The provisions of the general corporation act, as hereafter from time to time amended, shall apply to limited dividend housing companies, except where such provisions are in conflict therewith.

Dividend Rate

Sec. 15. No stockholder in any company formed hereunder shall receive any dividend, or other distribution based on stock ownership, in any one year in excess of six (6%) per centum per annum except that when in any preceding year dividends in the amount prescribed in the articles of incorporation shall not have been paid on the said stock, the stockholders may be paid such deficiency without interest out of any surplus earned in any succeeding years.

Stock and Bond Issues for Property or Money actually Received

Sec. 16. No limited dividend housing company incorporated under this act shall issue stock, bonds or income debentures, except for money, services or property actually received for the use and lawful

purpose of the corporation. No stock, bonds or income debentures shall be issued for property or services except upon a valuation approved by the board of housing and such valuation shall be used in computing actual or estimated cost.

Income Debenture Certificates

Sec. 17. The articles of incorporation may authorize the issuance of income debenture certificates bearing no greater interest than six (6%) per centum per annum. After the incorporation of a limited dividend housing company, the directors thereof may, with the consent of two-thirds of the holders of any preferred stock that may be issued and outstanding, offer to the stockholders of the company the privilege of exchanging their preferred and common stock in such quantities and at such times as may be approved by the board of housing for such income debenture certificates, whose face value shall not exceed the par value of the stock exchanged therefor.

Limitation of Powers

Sec. 18. No limited dividend housing company incorporated shall under this Act:

(1) Acquire any real property or interest therein unless it shall first have obtained from the board a certificate that such acquisition is necessary or convenient for the public purpose defined in this Act.

(2) Sell, transfer, assign or lease any real property without first having obtained the consent of the board, provided, however, that leases conforming to the regulations and rules of the board and for actual occupancy by the lessees may be made without the consent of the board. Any conveyance, incumbrance, lease or sublease made in violation of the provisions of this section and any transfer or assignment thereof shall be void.

(3) Pay interest returns on its mortgage indebtedness and its income debenture certificates at a higher rate than six (6%) per centum per annum.

(4) Issue its stock, debentures and bonds covering any project undertaken by it in an amount greater in the aggregate than the total actual final cost of such project, including the lands, improvements, charges for financing and supervision approved by the board and interest and other carrying charges during construction.

(5) Mortgage any real property without first having obtained the consent of the board.

(6) Issue any securities or evidences of indebtedness without first having obtained the approval of the board.

(7) Use any building erected or acquired by it for other than housing purposes, except that when permitted by law the story of the building above the cellar or basement and the space below such story

may be used for stores, commercial, cooperative or community purposes, and when permitted by law the roof may be used for cooperative or community purposes.

(8) Charge or accept any rental, purchase price or other charge in excess of the amounts prescribed by the board.

(9) Enter into contracts for the construction of housing projects, or for the payments of salaries to officers or employees except subject to the inspection and revision of the board and under such regulations as the board from time to time may prescribe.

(10) Voluntarily dissolve without first having obtained the consent of the board.

(11) Make any guaranty without the approval of the board.

Bonds and Mortgages subject to Board's Approval

Sec. 19. Any company formed under this act may, subject to the approval of the board, borrow funds and secure the repayment thereof by bonds and mortgage or by an issue of bonds under trust indenture. The bonds so issued and secured and the mortgage or trust indentures relating thereto, may create a first or senior lien and a second or junior lien upon the real property embraced in any project. Such bonds and mortgages may contain such other clauses and provisions as shall be approved by the board, including the right to assignment of rents and entry into possession in case of default; but the operation of the housing projects in the event of such entry by mortgagee or receiver shall be subject to the regulations of the board under this act. Provisions for the amortization of the bonded indebtedness of companies formed under this act shall be subject to the approval of the board.

Surplus Earnings

Sec. 20. The amount of net earnings transferable to surplus in any year after making or providing for the payments specified in subdivisions (a), (b) and (c) of Section 10 of this act shall be subject to the approval of the board. The amount of such surplus shall not exceed fifteen (15%) per centum of the outstanding capital stock and income debentures of the corporation, but the surplus so limited shall not be deemed to include any increase in assets due to the reduction of mortgage or amortization or similar payments. On dissolution of any limited dividend housing company, the stockholders and income debenture certificate holders shall in no event receive more than the par value of their stock and debentures plus accumulated, accrued and unpaid dividends of interest, less any payment or distributions theretofore made other than by dividends provided in Section 15, and any remaining surplus or other undistributed earnings shall be

paid into the general fund of the State of Texas, or shall be disposed of in such other manner as the board may direct and the Governor may approve.

Rentals Reduced after Payments of Charges

Sec. 21. If in any calendar or fiscal year the gross receipts of any company formed hereunder should exceed the payments or charges specified in Section 10, the sums necessary to pay dividends, interest accrued or unpaid on any stock or income debentures, and the authorized transfer to surplus, the balance shall, unless the board of directors with the approval of the board of housing shall deem such balance too small for the purposes, be applied to the reduction of rentals.

Board as Party in Foreclosures

Sec. 22. (1) In any foreclosure action the board shall be made a party defendant; and such board shall take all steps in such action necessary to protect the interest of the public therein, and no costs shall be awarded against the board. Foreclosure shall not be decreed unless the court to which application therefor is made shall be satisfied that the interests of the lienholder or holders cannot be adequately secured or safeguarded except by the sale of the property. In any such proceeding, the court shall be authorized to make an order increasing the rental to be charged for the housing accommodations in the project involved in such foreclosure, or appoint a receiver of the property or grant such other and further relief as may be reasonable and proper. In the event of a foreclosure sale or other judicial sale, the property shall, except as provided in the next succeeding paragraph of this section, be sold to a limited dividend housing corporation organized under this act, provided such corporation shall bid and pay a price for the property sufficient to pay court costs and all liens on the property with interest. Otherwise the property shall be sold free of all restrictions imposed by this act.

(2) Notwithstanding the foregoing provision of this section, wherever it shall appear that a corporation, subject to the supervision either of the state insurance department or state banking department, or the federal government or any agency or department of the federal government, shall have loaned on a mortgage which is a lien upon any such property such corporation shall have all the remedies available to a mortgagee under the laws of the State of Texas, free from any restrictions contained in this section, except that the board shall be made a party defendant and that such board shall take all steps necessary to protect the interests of the public and no costs shall be awarded against it.

Purchase of Property of Other Housing Corporations

Sec. 23. Before any limited dividend housing corporation incorporated under this act shall pur-

chase the property of any other limited dividend housing corporation, it shall file an application with the board in the manner hereinbefore provided as for a new project and shall obtain the consent of the board to the purchase and agree to be bound by the provisions of this act, and the board shall not give its consent unless it is shown to the satisfaction of the board that the project is one that can be successfully operated according to the provisions of this act.

Notice to Board of Sales under Judgments

Sec. 24. In the event of a judgment against a limited dividend housing corporation in any action not pertaining to the collection of a mortgage indebtedness, there shall be no sale of any of the real property of such corporation except upon sixty days' written notice to the board. Upon receipt of such notice the board shall take such steps as in its judgment may be necessary to protect the rights of all parties.

Fees of Board

Sec. 25. The board may charge and collect for a limited dividend housing corporation, incorporated under this act, reasonable fees in accordance with rates to be established by the rules of the board for the examination of plans and specifications and the supervision of construction in an amount not to exceed one-half of one per cent of the cost of the project; for the holding of a public hearing upon application of a housing corporation an amount sufficient to meet the reasonable cost of advertising the notice thereof and of the transcript of testimony taken thereat; for any examination or investigation made upon application of a housing corporation and for any act done by the board, or any of its employees, in performance of their duties under this act an amount reasonably calculated to meet the expense of the board incurred in connection therewith. In no event shall any part of the expenses of the board ever be paid out of the state treasury. The board may authorize a housing corporation to include such fees as part of the cost of a project, or as part of the charges specified in Section 10 of this act pursuant to rules to be established by the board.

Partial Invalidity

Sec. 26. 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.

Corporate Existence

Sec. 27. The corporate existence of any corporation authorized hereunder shall not extend beyond

twenty-five years from the date of incorporation, and promptly upon such termination the corporation shall be liquidated and its assets distributed as provided herein, unless the Incorporation Board, by approval of the State Board of Housing, should grant an extension for an additional period of time. [Acts 1933, 43rd Leg., p. 751, ch. 223.]

Art. 1528b. Electric Cooperative Corporation Act

Short Title

Sec. 1. This Act may be cited as the "Electric Cooperative Corporation Act."

Definitions

Sec. 2. In this Act, unless the context otherwise requires:

- (1) "Corporation" means a corporation organized pursuant to the provisions of this Act;
- (2) "Board" means a board of directors of a corporation organized under this Act;
- (3) "Member" means the incorporators of a corporation and each person thereafter lawfully admitted to membership therein;
- (4) "Federal agency" includes the United States of America and any department, administration, commission, board, bureau, office, establishment, agency, authority, or instrumentality of the United States of America heretofore or hereafter created;
- (5) "Person" includes any natural person, firm, association, corporation, business trust, partnership, Federal agency, State or political subdivision thereof or any body politic;
- (6) "Acquire" means and includes construct, acquire by purchase, lease, devise, gift, or other mode of acquisition;
- (7) "Obligations" include bonds, notes, debentures, interim certificates or receipts, and all other evidences of indebtedness issued by a corporation;
- (8) "Rural area" means any area not included within the boundaries of any incorporated or unincorporated city, town, village, or borough, having a population in excess of fifteen hundred (1,500) inhabitants, and includes both the farm and non-farm population thereof.

Purpose

Sec. 3. Co-operative, non-profit, membership corporations heretofore or hereafter organized under this Act are authorized to engage in rural electrification by any one or more of the following methods:

- (1) The furnishing of electric energy to any person, for delivery to any dwelling, structure, apparatus or point of delivery which is located in a rural

area, and which is not receiving central station service, notwithstanding the fact that such person may be receiving central station service at other points of delivery in a rural or nonrural area.

- (2) If any area in which such corporation is furnishing electric service to its members is annexed by an incorporated city or town (whether rural or nonrural as defined in this Act) in which central station service is supplied by such city or town or by a public utility corporation, the co-operative corporation is authorized to continue to furnish electric energy to any dwelling, structure, apparatus or point of delivery to which the co-operative corporation was delivering electric energy on the date of such annexation and if any person desires electric service in such annexed area for any dwelling, structure, apparatus or point of delivery which was not being served by the co-operative corporation on the date the area became annexed and to which central station service is not available from the city or town or a public utility corporation, the co-operative corporation may thereafter furnish electric energy to such dwelling, structure, apparatus or point of delivery.

- (3) The furnishing of electric energy to persons desiring such service in any incorporated or unincorporated city or town (rural or nonrural) served by such corporation, and in which no central station service was available at the time such corporation began furnishing electric energy to the citizens thereof.

- (4) The furnishing of electric energy to persons in rural areas who are not receiving central station service.

- (5) The words "central station service" as used in this Act refer to electric service provided by a municipally owned electric system or by a public utility corporation, as described in Article 1435, Vernon's Revised Statutes of Texas.

- (6) Assisting in the wiring of the premises of persons in rural areas or the acquisition, supply or installation of electrical or plumbing equipment.

- (7) The furnishing of electric energy, wiring facilities, electrical or plumbing equipment or service to any other corporation organized under this Act or to the members thereof.

Powers of Corporation

Sec. 4. Each corporation shall have power:

- (1) To sue and be sued, complain and defend, in its corporate name;
- (2) To have perpetual succession unless a limited period of duration is stated in its articles of incorporation;
- (3) To adopt a corporate seal which may be altered at pleasure, and to use it, or a facsimile thereof, as required by law;

(4) To generate, manufacture, purchase, acquire, and accumulate electric energy and to transmit, distribute, sell, furnish, and dispose of such electric energy to its members only, and to construct, erect, purchase, lease as lessee and in any manner acquire, own, hold, maintain, operate, sell, dispose of, lease as lessor, exchange, and mortgage plants, buildings, works, machinery, supplies, equipment, apparatus, and transmission and distribution lines or systems necessary, convenient, or useful;

(5) To assist its members only to wire their premises and install therein electrical and plumbing fixtures, machinery, supplies, apparatus, and equipment of any and all kinds and character, and in connection therewith and for such purposes, to purchase, acquire, lease, sell, distribute, install, and repair electrical and plumbing fixtures, machinery, supplies, apparatus, and equipment of any and all kinds and character and to receive, acquire, endorse, pledge, hypothecate, and dispose of notes, bonds, and other evidences of indebtedness;

(6) To furnish to other corporations organized under this Act, or to the members thereof, electric energy, wiring facilities, electrical and plumbing equipment, and services convenient or useful;

(7) To acquire, own, hold, use, exercise, and, to the extent permitted by law, to sell, mortgage, pledge, hypothecate, and in any manner dispose of franchises, rights, privileges, licenses, rights of way, and easements necessary, useful, or appropriate;

(8) To purchase, receive, lease as lessee, or in any other manner acquire, own, hold, maintain, sell, exchange, and use any and all real and personal property or any interest therein;

(9) To borrow money and otherwise contract indebtedness, to issue its obligations therefor, and to secure the payment thereof by mortgage, pledge, or deed of trust of all or any of its property, assets, franchises, revenues, or income;

(10) To sell and convey, mortgage, pledge, lease as lessor, and otherwise dispose of all or any part of its property and assets;

(11) To have and exercise the power of eminent domain for the purpose and in the manner provided by the condemnation laws of this State for acquiring private property for public use, such right to be paramount except as to property of the State, or of any political subdivision thereof;

(12) To accept gifts or grants of money, services, or property, real or personal;

(13) To make any and all contracts necessary or convenient for the exercise of the powers granted in this Act;

(14) To fix, regulate, and collect rates, fees, rents, or other charges for electric energy and any other

facilities, supplies, equipment, or services furnished by the corporation;

(15) To conduct its business, and have offices within or without this State;

(16) To elect or appoint officers, agents, and employees of the corporation, and to define their duties and fix their compensation;

(17) To make and alter by-laws, not inconsistent with the articles of incorporation or with the laws of this State for the administration and regulation of the affairs of the corporation;

(18) To do and perform, either for itself or its members, or for any other corporation organized under this Act, or for the members thereof, any and all acts and things, and to have and exercise any and all powers as may be necessary, convenient, or appropriate to effectuate the purpose for which the corporation is organized.

Additional Powers

Sec. 4A. Notwithstanding any other provision of this Act, a corporation has authority to generate, manufacture, purchase, acquire, and accumulate electric energy and to transmit, distribute, sell, furnish, and dispose of such electric energy to the following entities if the same are engaged in the generation and transmission of electricity for resale:

(1) firms, associations, corporations, except those who meet the criteria for a small power production facility and/or a cogeneration facility under Section 201 of the Public Utility Regulatory Policies Act of 1978 (PURPA);¹

(2) federal agency;

(3) state or political subdivision of a state with an installed generation capacity in excess of 500 MW; or

(4) a municipal power agency which is a co-owner with such corporation of a jointly owned electric generation facility.

A corporation may also sell, furnish, and dispose of the electric energy to a political subdivision of the state which is engaged in the generation, transmission, or distribution of electricity for resale and to which the corporation was selling and furnishing electric energy on December 31, 1982.

The members-only requirement of Section 4(4) of this Act shall continue to apply to all sales by a corporation to other persons and entities.

¹ 16 U.S.C.A. § 796(17) to (22).

Incorporators

Sec. 5. Any three or more natural persons of the age of twenty-one (21) years or more, residents of this State, may act as incorporators of a corporation to be organized under this Act by executing

articles of incorporation as hereinafter provided in this Act.

Articles of Incorporation

Sec. 6. (a) The articles of incorporation shall state:

(1) The name of the corporation, which name shall include the words "Electric Cooperative" and the word "Corporation," "Incorporated," "Inc.," "Association," or "Company" and the name shall be such as to distinguish it from any other corporation organized and existing under the laws of this State;

(2) The purpose for which the corporation is formed;

(3) The names and addresses of the incorporators who shall serve as directors and manage the affairs of the corporation until its first annual meeting of members, or until their successors are elected and qualify;

(4) The number of directors, not less than three (3), to be elected at the annual meetings of members;

(5) The address of its principal office and the name and address of its agent upon whom process may be served;

(6) The period of duration of the corporation, which may be perpetual;

(7) The terms and conditions upon which persons shall be admitted to membership and retain membership in the corporation, but if expressly so stated the determination of such matters may be reserved to the directors by the by-laws;

(8) Any provisions, not inconsistent with law, which the incorporators may choose to insert, for the regulation of the business and the conduct of the affairs of the corporation.

(b) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this Act.

Prohibition on Use of Words "Electric Cooperative"

Sec. 7. The words "Electric Cooperative" shall not be used in the corporate name of corporations organized under the laws of this State, or authorized to do business herein, other than those organized pursuant to the provisions of this Act.

Execution, Filing, and Recording of Articles of Incorporation

Sec. 8. When the incorporators of any corporation shall furnish satisfactory evidence to the Secretary of State of a compliance with the provisions of this Act, said officer shall receive, file, and record the articles of incorporation of such corporation in his office, upon application and payment of all fees therefor, and give a certificate showing the recording of such articles and authority to do business

thereunder. The articles shall thereupon be filed in the office of the Secretary of State, who shall record same at length in a book to be kept for that purpose, and retain the original on file in his office. A copy of the articles, or of the record thereof, certified under the Great Seal of the State, shall be evidence of the creation of the corporation. The existence of the corporation shall date from the filing of the articles in the office of the Secretary of State. The certificate of the Secretary of State shall be evidence of such filing.

Renewal of Articles of Incorporation

Sec. 9. Any corporation organized under this Act, whose articles of incorporation have expired by limitation, may revive such articles with all the privileges and immunities and rights of property, real and personal, exercised and held by it at the time of the expiration of its said articles, by filing with the consent of a majority of its members, new articles of incorporation under the provisions of this Act, reciting therein such original privileges, immunities, and rights of property, and by filing therewith a certified copy of such original expired articles.

Organization Meeting

Sec. 10. After the issuance of the certificate of incorporation, an organization meeting shall be held, at the call of a majority of the incorporators, for the purpose of adopting by-laws and electing officers and for the transaction of such other business as may properly come before the meeting. The incorporators calling the meeting shall give at least three (3) days' notice thereof by mail to each incorporator, which notice shall state the time and place of the meeting but such notice may be waived in writing.

By-laws

Sec. 11. The power to make, alter, amend, or repeal the by-laws of the corporation shall be vested in the Board of Directors. The by-laws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law or the articles of incorporation.

Qualification of Members

Sec. 12. All persons having any dwelling, structure, apparatus or point of delivery in rural areas (or in areas provided for in Subdivisions (1) to (4) of Section 3 of this Act) proposed to be served by a corporation who are not receiving central station service at such dwelling, structure, apparatus or point of delivery, shall be eligible to membership in a corporation with respect to such dwelling, structure, apparatus or point of delivery. No person other than the incorporators shall be, become, or remain a member of a corporation unless such person shall use or agree to use electric energy or, as the case may be, the facilities, supplies, equipment,

and services furnished by the corporation at the dwelling, structure, apparatus or point of delivery on which the membership is based. A corporation organized under this Act may become a member of another such corporation and may avail itself fully of the facilities and service thereof.

Meetings of Members

Sec. 13. (a) Meetings of members may be held at such place as may be provided in the by-laws. In the absence of any such provision, all meetings shall be held in the principal office of the corporation in this State.

(b) An annual meeting of the members shall be held at such time as may be provided in the by-laws. Failure to hold the annual meeting at the designated time shall not work forfeiture or dissolution of the corporation.

(c) Special meetings of the members may be called by the president, by the Board of Directors, or a majority thereof, by a petition signed by not less than one-tenth of all the members or by such other officers or persons as may be provided in the articles of incorporation or the by-laws.

Notice of Members' Meetings

Sec. 14. Written or printed notice stating the place, day, and hour of the meeting of members and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) nor more than thirty (30) days before the date of the meeting, either personally or by mail, by or at the direction of the president or the secretary, or the officers or persons calling the meeting, to each member of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mails in a sealed envelope addressed to the member at his address as it appears on the records of the corporation, with postage thereon prepaid. Notice of meetings of members may be waived in writing.

Voting by Members

Sec. 15. Each member present shall be entitled to one and only one vote on each matter submitted to a vote at a meeting of members, but voting by proxy or by mail may be provided for in the by-laws.

Certificate of Membership

Sec. 16. When a member of a corporation has paid the membership fee in full, a certificate of membership shall be issued to such member. Memberships in the corporation and the certificates shall be non-transferable. The certificate of membership shall be surrendered to the corporation upon the resignation, expulsion, or death of the member. Except for debts lawfully contracted between him and the corporation, no member shall be liable for

the debts of the corporation to an amount exceeding the sum remaining unpaid on his membership fee.

Quorum of Members

Sec. 17. Unless otherwise provided in the articles of incorporation, a majority of the members present, in person or represented by proxy, shall constitute a quorum for the transaction of business at a meeting of members, but if voting by mail is provided for in the by-laws, members so voting shall be counted as if present.

Board of Directors

Sec. 18. The business and affairs of a corporation shall be managed by a Board of Directors, not less than three (3) in number, which shall exercise all the powers of the corporation except such as are conferred upon the members by this Act, by the articles of incorporation or by the by-laws of the corporation. The by-laws may prescribe qualifications for directors.

Election, Qualification, and Compensation of Directors

Sec. 19. The directors, other than those named in the certificate of incorporation to serve until the first annual meeting of members, shall be elected annually, or as otherwise provided in the by-laws, by the members. The directors shall be members of the corporation and shall be entitled to such compensation and reimbursement for expenses actually and necessarily incurred by them as may be provided in the by-laws.

Vacancies

Sec. 20. Any vacancy occurring in the Board and any directorship to be filled, shall be filled as provided in the by-laws by persons who shall serve until directors may be regularly elected as provided for in this Act.

Quorum of Directors

Sec. 21. A majority of the Board shall constitute a quorum for the transaction of business unless a greater number is required by the articles of incorporation or the by-laws. The act of the majority of the directors, present at a meeting at which a quorum is present, shall be the act of the Board, unless the act of a greater number is required by the articles of incorporation or the by-laws.

Directors' Meetings

Sec. 22. Meetings of the Board, regular or special, shall be held at such place and upon such notice as the by-laws may prescribe. Attendance of a director at any meeting shall constitute a waiver of notice of such meeting except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither

the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.*

Officers, Agents, and Employees

Sec. 23. (a) The Board shall elect from its number a president, a vice-president, a secretary, and a treasurer, but the same person may be elected to the office of secretary and treasurer. The powers and duties of the foregoing officers, as well as their term of office and compensation shall be provided for in the by-laws.

(b) The Board shall appoint such other officers, agents, and employees as it deems necessary and fix their powers, duties, and compensation.

(c) Any officer, agent, or employee elected or appointed by the Board, may be removed by it whenever in its judgment the best interests of the corporation will be served.

Executive Committee

Sec. 24. Any corporation may, by its by-laws, provide for an executive committee to be elected from and by its Board of Directors. To such committee may be delegated the management of the current and ordinary business of the corporation, and such other duties as the by-laws may prescribe, but the designation of such committee and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any member thereof, of any responsibility imposed upon it or him by this Act.

Non-profit Operation

Sec. 25. (a) Each corporation shall be operated without profit to its members but the rates, fees, rents, or other charges for electric energy and any other facilities, supplies, equipment, or services furnished by the corporation shall be sufficient at all times.

(1) To pay all operating and maintenance expenses necessary or desirable for the prudent conduct of its business and the principal of and interest on the obligations issued or assumed by the corporation in the performance of the purpose for which it was organized, and

(2) For the creation of reserves.

(b) The revenues of the corporation shall be devoted first to the payment of operating and maintenance expenses and the principal and interest on outstanding obligations, and thereafter to such reserves for improvement, new construction, depreciation, and contingencies as the Board may from time to time prescribe.

(c) Revenues not required for the purposes set forth in Subsection (b) of this Section shall be returned from time to time to the members on a pro

rata basis according to the amount of business done with each during the period, either in cash, in abatement of current charges for electric energy, or otherwise as the Board determines; but such return may be made by way of general rate reduction to members, if the Board so elects.

Amendment of Articles of Incorporation

Sec. 26. A corporation may amend its articles of incorporation by an affirmative vote of a majority of the members who are present in person or by proxy at any regular meeting of such members, or at any special meeting that has been called for that purpose in the manner provided by the by-laws of such corporation. Notice to the members of such regular or special meeting shall state the general nature of each proposed amendment to be presented and voted upon at the meeting. No valid action shall be had or taken at any such regular or special meeting unless such regular or special meeting is attended by not less than five per cent (5%) of the members either in person or by proxy. The power to amend shall include the power to accomplish any desired change in the provisions of its articles of incorporation and to include any purpose, power, or provision which would be authorized to be included in original articles of incorporation if executed at the time the amendment is made. Articles of amendment signed by the president or vice-president, and attested by the secretary, certifying to such amendment and its lawful adoption shall be executed, acknowledged, filed and recorded in the same manner as the original articles of incorporation of a corporation organized under this Act; and as soon as the Secretary of State shall have accepted the articles of amendment for filing and recording, and issued a certificate of amendment, the amendment or amendments shall be in effect, and the certificate of the Secretary of State shall be evidence of such filing.

Consolidation

Sec. 27. (a) Any two or more corporations may enter into an agreement for the consolidation of such corporations. The agreement shall set forth the terms and conditions of the consolidation, the name of the proposed consolidated corporation, the number of its directors, not less than three (3), the time of the annual meeting and election, and the name of at least three (3) persons to be directors until the first annual meeting. If such agreement is approved by the votes of a majority of the members of each corporation, present in person or by proxy at any regular meeting, or at any special meeting, of its members called for that purpose, the directors named in the agreement shall sign and acknowledge as incorporators articles of consolidation conforming substantially to original articles of incorporation of a corporation organized under this Act.

(b) The articles of consolidation shall be executed, acknowledged, filed, and recorded in the same manner as the original articles of incorporation of a corporation organized under this Act. As soon as the Secretary of State shall have accepted the articles of consolidation for filing and recording and issued a certificate of consolidation, the proposed consolidated corporation, described in the articles under its designated name, shall be and become a body corporate, with all of the powers of a corporation as originally organized hereunder.

Dissolution

Sec. 28. (a) Any corporation may dissolve by majority vote of the members, present in person or by proxy at any regular meeting, or at any special meeting, of its members called for that purpose. A certificate of dissolution shall be signed by the president or vice-president and attested by the secretary, certifying to such dissolution and stating that they have been authorized to execute and file such certificate by votes cast in person or by proxy by a majority of the members of the corporation. A certificate of dissolution shall be executed, acknowledged, filed, and recorded in the same manner as the original articles of incorporation of a corporation organized under this Act and as soon as the Secretary of State shall have accepted the certificate of dissolution for filing and recording and issued a certificate of dissolution, the corporation shall be deemed to be dissolved.

(b) Such corporation shall, however, continue for the purpose of paying, satisfying, and discharging any existing liabilities or obligations and collecting or liquidating its assets, and doing all other acts required to adjust and wind up its business and affairs, and may sue and be sued in its corporate name. Any assets remaining after all liabilities or obligations of the corporation have been satisfied or discharged shall be distributed pro rata among the members of the corporation at the time of the filing of the certificate of dissolution.

(c) Any corporation which purports to have been incorporated or re-incorporated under this Act but which has not complied with all of the requirements for legal corporate existence may nevertheless file a certificate of dissolution in the same manner as a validly existing corporation. The certificate of dissolution, in such case, may be authorized by a majority of the incorporators or directors at a meeting called by any incorporator upon ten (10) days' notice mailed to the last known postoffice address of each incorporator or director, and held at the principal office of the corporation named in the articles of incorporation.

Fees

Sec. 29. The Secretary of State shall charge and collect for:

(1) Filing articles of incorporation and issuing a certificate of incorporation, Ten Dollars (\$10).

(2) Filing of articles of amendment and issuing a certificate of amendment, Two Dollars and Fifty Cents (\$2.50).

(3) Filing articles of consolidation and issuing a certificate with respect thereto, Ten Dollars (\$10).

(4) Filing articles of dissolution, Two Dollars and Fifty Cents (\$2.50).

Exemption from Excise Taxes—License Fee

Sec. 30. Corporations formed hereunder shall pay annually, on or before May first, to the Secretary of State, a license fee of Ten Dollars (\$10) and such corporations shall be exempt from all other excise taxes of whatsoever kind or nature. However, the corporations are exempt from the franchise tax imposed by Chapter 171, Tax Code, only if the corporations are exempted by that chapter.

Limited Exemption from Securities Act

Sec. 31. Whenever any corporation organized under this Act shall have borrowed money from any Federal agency, the obligations issued to secure the payment of such money shall be exempt from the provisions of the Texas Securities Act (Chapter 100, Acts of the Forty-fourth Legislature, Regular Session), or any Acts amendatory thereof, nor shall the provisions of said Act apply to the issuance of membership certificates.

Defectively Organized Corporations

Sec. 32. In the event any corporation has filed defective articles of incorporation or has failed to do all things necessary to perfect its corporate organization, it may, nevertheless, file corrected articles of incorporation or amend the original articles and do and perform all acts and things necessary in the premises for the correction of such defects. The action so taken shall be valid and binding upon all persons concerned and the capacity of such corporation to file corrected articles of incorporation or amendments to the original articles, or to do and perform all acts and things necessary in the premises shall not be questioned.

Act Extended to Existing Corporations

Sec. 33. Any existing cooperative or nonprofit corporation or association, organized under any other law of this State, for the purpose of engaging in rural electrification, may, by a majority vote of the members present in person or by proxy at a meeting called for that purpose, amend its articles of incorporation so as to comply with this Act.

Construction of Act

Sec. 34. This Act shall be construed liberally. The enumeration of any object, purpose, power,

manner, method, or thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods, or things.

Separability of Provisions

Sec. 35. If any provision of this Act, or the application of such provision to any person or circumstance is held invalid, the remainder of the Act and the application of such provisions to other persons or circumstances shall not be affected thereby.

Act complete in itself

Sec. 36. This Act is complete in itself and shall be controlling. The provisions of any other law of this State, except as provided in this Act, shall not apply to a corporation organized, or in process of organization, under this Act.

[Acts 1937, 45th Leg., p. 161, ch. 86. Amended by Acts 1947, 50th Leg., p. 215, ch. 123, § 1; Acts 1957, 55th Leg., p. 692, ch. 290, §§ 1, 2; Acts 1981, 67th Leg., p. 1778, ch. 389, § 30, eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 753, ch. 183, § 1, eff. Aug. 29, 1983.]

Section 1 of the 1981 amendatory act enacted Title 2 of the Tax Code.

Art. 1528c. Telephone Cooperative Act

Short Title

Sec. 1. This Act may be cited as the "Telephone Cooperative Act."

Definitions

Sec. 2. In this Act, unless the context otherwise requires:

(1) "Corporation" means any corporation organized under this Act or which becomes subject to this Act in the manner hereinafter provided.

(2) "Member" means the incorporators of a corporation and each person thereafter lawfully admitted to membership therein.

(3) "Board" means a Board of Directors of a corporation organized under this Act.

(4) "Federal Agency" includes the United States of America and any department, administration, commission, board, bureau, office, establishment, agency, authority, or instrumentality of the United States of America heretofore or hereafter created.

(5) "Person" includes any natural person, firm, association, corporation, business trust, partnership, Federal agency, State or political subdivision thereof or any body politic.

(6) "Telephone service" means any communication service whereby voice communication through the use of electricity is the principal intended use thereof, and shall include all telephone lines, facilities or systems used in the rendition of such service.

(7) "Rural area" is defined to mean any area in this State which is located outside the boundaries of

any incorporated or unincorporated city, town or village having a population in excess of one thousand five hundred (1,500) inhabitants according to the last preceding Federal Census, or determined to have less than one thousand five hundred (1,500) inhabitants as provided by Subsection (4) of Section 4 of this Act.

Purpose

Sec. 3. Cooperative, non-profit corporations may be organized under this Act for the purpose of furnishing telephone service in rural areas to the widest practicable number of users of such service; provided there shall be no duplication of service where reasonable adequate telephone service is available.

Powers of Corporation

Sec. 4. Each corporation shall have power:

(1) To sue and be sued, complain and defend, in its corporate name;

(2) To have perpetual succession unless a limited period of duration is stated in its articles of incorporation;

(3) To adopt a corporate seal which may be altered at pleasure, and to use it, or a facsimile thereof, as required by law;

(4) To furnish, improve and expand telephone service to its members, to governmental agencies and political subdivisions, and to other persons not in excess of ten per centum (10%) of the number of its members, provided, however, that, without regard to said ten per centum (10%) limitation, telephone service may be made available by a corporation through interconnection of facilities to any number of subscribers of other telephone systems, and through pay stations to any number of users; and provided, further, that a corporation which acquires existing telephone facilities may continue service to persons, not in excess of forty per centum (40%) of the number of its members, who are already receiving service from such facilities without requiring such persons to become members but such persons may become members upon such terms as may be prescribed in the by-laws; provided there shall be no duplication of services where reasonably adequate telephone services are available.

(5) To construct, purchase, lease as lessee, or otherwise acquire, and to improve, expand, install, equip, maintain, and operate, and to sell, assign, convey, lease as lessor, mortgage, pledge, or otherwise dispose of or encumber, telephone lines, facilities or systems, lands, buildings, structures, plants and equipment, exchanges, and any other real or personal property, tangible or intangible, which shall be deemed necessary, convenient or appropriate to accomplish the purpose for which the corporation is organized; provided that no cooperative shall

furnish local telephone exchange service within the boundaries of any incorporated or unincorporated city, town or village within this State having a population in excess of one thousand five hundred (1,500) inhabitants according to the last preceding Federal Census, except where the governing body (the City Council of an incorporated area and Commissioners Court in an unincorporated area) after published notice and public hearing determines the population of such incorporated or unincorporated city, town or village has decreased below one thousand five hundred (1,500) inhabitants since taking and publishing the last preceding Federal Census, which order shall be entered of record in the official minutes of said governing body and shall be accepted as a true and correct determination of such population for all purposes hereunder unless contest thereof be filed within sixty (60) days from date of such order, or the official entry thereof, by any company or person at interest or living in the affected area, in a court of competent jurisdiction, in which event the question shall abide the result of such contest; and provided further that the corporation may continue to furnish telephone exchange service within the boundaries of any incorporated or unincorporated city, town, or village within this State having a population in excess of one thousand five hundred (1,500) inhabitants according to the latest Federal Census, if the area was previously receiving local telephone exchange service from the corporation prior to the time that the area increased in population to more than one thousand five hundred (1,500) inhabitants or the area became annexed to an incorporated city, town, or village having a population in excess of one thousand five hundred (1,500) inhabitants; and provided further that this Subsection shall not be considered as a limitation or expansion of the provisions of Subsection (4) of Section 4.

(6) To connect and interconnect its telephone lines, facilities or systems with other telephone lines, facilities or systems;

(7) To make its facilities available to persons furnishing telephone service within or without this State;

(8) To purchase, lease as lessee, or otherwise acquire, and to use, and exercise and to sell, assign, convey, mortgage, pledge or otherwise dispose of or encumber, franchises, rights, privileges, licenses and easements;

(9) To issue membership certificates as hereinafter provided;

(10) To borrow money and otherwise contract indebtedness, and to issue or guarantee notes, bonds, and other evidences of indebtedness, and to secure the payment thereof by mortgage, pledge, or deed of trust of, or any other encumbrance upon, any or all of its real or personal property, assets, franchises, or revenues;

(11) To construct, maintain and operate telephone lines along, upon, under and across publicly owned lands and public thoroughfares, including all roads, highways, streets, alleys, bridges and causeways, subject, however, to the same restrictions and obligations required of electric transmission cooperatives in House Bill No. 393, Acts of the Fifty-first Legislature, Regular Session.¹

(12) To exercise the power of eminent domain in the manner provided by the laws of this State for the exercise of such power by other corporations constructing or operating telephone lines, facilities or systems.

(13) To conduct its business and exercise its powers within or without this State;

(14) To adopt, amend and repeal by-laws;

(15) To make any and all contracts necessary, convenient or appropriate for the full exercise of the powers herein granted; and

(16) To do and perform any other acts and things, and to have and exercise any other powers which may be necessary, convenient or appropriate to accomplish the purpose for which the corporation is organized.

¹ Article 1436a.

Incorporators

Sec. 5. Any three or more natural persons of the age of twenty-one (21) years or more, residents of this State, may act as incorporators of a corporation to be organized under this Act by executing articles of incorporation as hereinafter provided in this Act.

Articles of Incorporation

Sec. 6. (a) The articles of incorporation shall recite that they are executed pursuant to this Act and such articles shall be signed by each incorporator and acknowledged by at least two (2) of the incorporators, or on their behalf, if they are cooperatives, and shall state:

(1) The name of the corporation, which name shall include the words "Telephone" and "Cooperative," and the abbreviation "Inc.," The name of a corporation shall be distinct from the name of any other corporation organized under the laws of, or authorized to do business in, this State. The words "Telephone Cooperative" shall not be used in the corporate name of corporations organized under the laws of this State, or authorized to do business herein, other than those organized pursuant to the provisions of this Act;

(2) The purpose for which the corporation is formed;

(3) The names and addresses of the incorporators who shall serve as directors and manage the affairs of the corporation until its first annual meeting of

members, or until their successors are elected and qualify;

(4) The number of directors, not less than five (5), to be elected at the annual meetings of members;

(5) The address of its principal office and the name and address of its agent upon whom process may be served;

(6) The period of duration of the corporation, which may be perpetual;

(7) The terms and conditions upon which persons shall be admitted to membership and retain membership in the corporation, but if expressly so stated the determination of such matters may be reserved to the directors by the by-laws; and

(8) Any provisions; not inconsistent with law, which the incorporators may choose to insert, for the regulation of the business and the conduct of the affairs of the corporation.

(b) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this Act.

Execution, Filing, and Recording of Articles of Incorporation

Sec. 7. When the incorporators of any corporation shall furnish satisfactory evidence to the Secretary of State of a compliance with the provisions of this Act, said officer shall receive, file, and record the articles of incorporation of such corporation in his office, upon application and payment of all fees therefor, and give a certificate showing the recording of such articles and authority to do business thereunder. The articles shall thereupon be filed in the office of the Secretary of State, who shall record same at length in a book to be kept for that purpose, and retain the original on file in his office. A copy of the articles, or of the record thereof, certified under the Great Seal of the State, shall be evidence of the creation of the corporation. The existence of the corporation shall date from the filing of the articles in the office of the Secretary of State. The certificate of the Secretary of State shall be evidence of such filing.

Renewal of Articles of Incorporation

Sec. 8. Any corporation organized under this Act, whose articles of incorporation have expired by limitation, may revive such articles with all the privileges and immunities and rights of property, real and personal, exercised and held by it at the time of the expiration of its said articles, by filing with the consent of a majority of its members, new articles of incorporation under the provisions of this Act, reciting therein such original privileges, immunities, and rights of property, and by filing therewith a certified copy of such original expired articles.

Organization Meeting

Sec. 9. After the issuance of the certificate of incorporation, an organization meeting shall be held, at the call of a majority of the incorporators, for the purpose of adopting by-laws and electing officers and for the transaction of such other business as may properly come before the meeting. The incorporators calling the meeting shall give at least three (3) days' notice thereof by mail to each incorporator, which notice shall state the time and place of the meeting but such notice may be waived in writing.

By-laws

Sec. 10. The Board of Directors shall adopt the first by-laws of a corporation to be adopted following an incorporation, consolidation or amendment by an existing corporation of the Articles of Incorporation pursuant to Section 33 of this Act. Thereafter, the members shall adopt, amend or repeal the by-laws by the affirmative vote of a majority of those members voting thereon at a meeting of the members. The by-laws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law or the articles of incorporation.

Qualification of Members

Sec. 11. Each incorporator of a cooperative shall be a member thereof but no other person may become a member thereof unless such other person agrees to use telephone service furnished by the corporation when it is made available through its facilities. Membership in a corporation shall be evidenced by a certificate of membership which shall not be transferable, except as provided in the by-laws. The by-laws may prescribe additional qualifications and limitations in respect to membership. Membership certificates shall contain such provisions, consistent with this Act and the articles of incorporation of the corporation, as shall be prescribed by its by-laws. A corporation organized under this Act may become a member of another such corporation and may avail itself fully of the facilities and services thereof.

Meetings of Members

Sec. 12. (a) An annual meeting of the members of a corporation shall be held at such time and place as shall be provided in the by-laws. Failure to hold the annual meeting at the designated time shall not work forfeiture or dissolution of the corporation.

(b) Special meetings of the members may be called by the president, by the Board of Directors, by any three (3) directors, or by not less than two hundred (200) members or ten per centum (10%) of all members, whichever shall be the lesser.

(c) Except as otherwise provided in this Act, written or printed notice stating the time and place of each meeting of the members and, in the case of a

special meeting, the purpose or purposes for which the meeting is called, shall be given to each member, either personally or by mail, not less than ten (10) days nor more than twenty-five (25) days before the date of the meeting. If mailed, such notice shall be deemed to be given when deposited in the United States mail with postage prepaid addressed to the member at his address as it appears on the records of the corporation.

(d) Unless the by-laws prescribe the presence of a greater percentage or number of the members for a quorum, a quorum for the transaction of business at all meetings of the members of a corporation having not more than five hundred (500) members, shall be ten per centum (10%) of all members, present in person, and of a corporation having more than five hundred (500) members, shall be fifty (50) members or two per centum (2%) of all members, whichever is greater, present in person. If less than a quorum is present at any meeting, a majority of those present in person may adjourn the meeting from time to time without further notice.

(e) Each member present shall be entitled to one and only one vote on each matter submitted to a vote at a meeting of members, and voting shall be in person, but, if the by-laws so provide, may also be by mail.

Waiver of Notice

Sec. 13. Any person entitled to notice of a meeting may waive such notice in writing either before or after such meeting. If any such person shall attend such meeting, such attendance shall constitute a waiver of notice of such meeting, unless such person participates therein solely to object to the transaction of any business because the meeting has not been legally called or convened.

Board of Directors

Sec. 14. (a) The business of a corporation shall be managed by a board of not less than five (5) directors, each of whom shall be a member of the corporation. The by-laws shall prescribe the number of directors, their qualifications, other than those prescribed in this Act, the manner of holding meetings of the Board of Directors and of electing successors to directors who shall resign, die, or otherwise be incapable of acting. The by-laws may also provide for the removal of directors from office and for the election of their successors. Directors shall not receive any salaries for their services as directors and, except in emergencies, shall not receive any salaries for their services in any other capacity without the approval of the members. The by-laws may, however, prescribe a fixed fee for attendance at each meeting of the Board of Directors and may provide for reimbursement of actual expenses of attendance.

(b) The directors of a corporation named in any articles of incorporation shall hold office until the next annual meeting of the members and until their successors are elected and qualify. At each annual meeting or, in the case of failure to hold the annual meeting as specified in the by-laws, at a special meeting called for that purpose, the members shall elect directors to hold office until the next annual meeting of the members, except as otherwise provided in this Act. Each director shall hold office for the term for which he is elected and until his successor is elected and qualifies.

(c) Instead of electing all the directors annually, the by-laws may provide that the directors, other than those named in the articles of incorporation to serve until the first annual meeting of the members, shall be elected by the members for a term not to exceed three (3) years. If a term other than one (1) year is provided by the by-laws, then a staggered term will be provided with one-half ($\frac{1}{2}$) of the directors (or the number nearest thereto) being elected annually when a two (2) year term is provided, and one-third ($\frac{1}{3}$) of the directors (or the number nearest thereto) being elected annually when a three (3) year term is provided. Thereafter, as directors' terms expire, the members shall elect their successors to serve until the second or third succeeding annual meeting after their election.

(d) A majority of the Board of Directors shall constitute a quorum.

(e) The Board of Directors may exercise all of the powers of a corporation not conferred upon the members by this Act, or its articles of incorporation or by-laws.

Districts

Sec. 15. The by-laws may provide for the division of the territory served or to be served by a corporation into two (2) or more districts for any purpose, including, without limitation, the nomination and election of directors and the election and functioning of district delegates. Such delegates, who shall be members, may nominate and elect directors. The by-laws shall prescribe the boundaries of the districts, or the manner of establishing such boundaries, and the manner of changing such boundaries, and the manner in which such districts shall function. No member at any district meeting and no district delegate at any meeting shall vote by proxy or by mail.

Officers

Sec. 16. The officers of a corporation shall consist of a president, vice-president, secretary and treasurer, who shall be elected annually by and from the Board of Directors. When a person holding any such office ceases to be a director, he shall cease to hold such office. The offices of secretary and of treasurer may be held by the same person.

The Board of Directors may also elect or appoint such other officers, agents, or employees as it deems necessary or advisable and shall prescribe their powers and duties. Any officer may be removed from office and his successor elected in the manner prescribed in the by-laws.

Executive Committee

Sec. 17. Any corporation may, by its by-laws, provide for an executive committee to be elected from and by its Board of Directors. To such committee may be delegated the management of the current and ordinary business of the corporation, and such other duties as the by-laws may prescribe, but the designation of such committee and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any member thereof, of any responsibility imposed upon it or him by this Act.

Amendment of Articles of Incorporation

Sec. 18. A corporation may amend its articles of incorporation by complying with the following requirements, provided however, that a change of location of principal office may be effected in the manner set forth in Section 19 of this Act: The proposed amendment shall be presented to a meeting of the members, the notice of which shall set forth or have attached thereto the proposed amendment. If the proposed amendment, with any changes, is approved by the affirmative vote of not less than two-thirds ($\frac{2}{3}$) of those members voting hereon at such meeting, articles of amendment shall be executed and acknowledged on behalf of the corporation by its president or vice-president and its seal shall be affixed thereto and attested by its secretary. The articles of amendment shall recite that they are executed pursuant to this Act and shall state: (1) the name of the corporation; (2) the address of its principal office; and (3) the amendment to its articles of incorporation. The president or vice-president executing such articles of amendment shall make and annex thereto an affidavit stating that the provisions of this Section in respect of the amendment set forth in such articles were duly complied with. The articles of amendment shall be filed with the Secretary of State in the same manner as the original articles of incorporation, as provided in this Act.

Change of the Location of Principal Office

Sec. 19. A corporation may, upon authorization of its Board of Directors or its members, change the location of its principal office by filing a certificate reciting such change of principal office, executed and acknowledged by its president or vice-president under its seal attested to by its secretary, in the office of the Secretary of State.

Consolidation

Sec. 20. (a) Any two or more corporations may enter into an agreement for the consolidation of such corporations. The agreement shall set forth the terms and conditions of the consolidation, the name of the proposed consolidated corporation, the number of its directors, not less than five (5), the time of the annual meeting and election, and the name of at least five (5) persons to be directors until the first annual meeting. If such agreement is approved by the votes of a majority of the members of each corporation at any regular meeting, or at any special meeting of its members called for that purpose, the directors named in the agreement shall sign and acknowledge as incorporators articles of consolidation conforming substantially to original articles of incorporation of a corporation organized under this Act.

(b) The articles of consolidation shall be executed, acknowledged, filed, and recorded in the same manner as the original articles of incorporation of a corporation organized under this Act. As soon as the Secretary of State shall have accepted the articles of consolidation for filing and recording and issued a certificate of consolidation, the proposed consolidated corporation, described in the articles under its designated name, shall be and become a body corporate, with all the powers of a corporation as originally organized hereunder. Provided that no consolidation shall be made for the purpose of duplicating the facilities of any other telephone company where such other telephone company is giving or is willing to give reasonable adequate telephone service.

Dissolution

Sec. 21. (a) Any corporation may be dissolved by majority vote of the members at any regular meeting, or at any special meeting of its members called for that purpose. A certificate of dissolution shall be signed by the president or vice-president and attested by the secretary, certifying to such dissolution and stating that they have been authorized to execute and file such certificate by votes cast in person or by proxy by a majority of the members of the corporation. A certificate of dissolution shall be executed, acknowledged, filed, and recorded in the same manner as the original articles of incorporation of a corporation organized under this Act and as soon as the Secretary of State shall have accepted the certificate of dissolution for filing and recording and issued a certificate of dissolution, the corporation shall be deemed to be dissolved.

(b) Such corporation shall, however, continue for the purpose of paying, satisfying, and discharging any existing liabilities or obligations and collecting or liquidating its assets, and doing all other acts required to adjust and wind up its business and affairs, and may sue and be sued in its corporate

name. Any assets remaining after all liabilities or obligations of the corporation have been satisfied or discharged shall be distributed, first, to patrons for the pro rata return of all amounts standing to their credit by reason of their patronage, and, second, to members for the pro rata repayment of membership fees.

(c) Any corporation which purports to have been incorporated or reincorporated under this Act but which has not complied with all of the requirements for legal corporate existence may nevertheless file a certificate of dissolution in the same manner as a validly existing corporation. The certificate of dissolution, in such case, may be authorized by a majority of the incorporators or directors at a meeting called by any incorporator upon ten (10) days' notice mailed to the last known post office address of each incorporator or director, and held at the principal office of the corporation named in the articles of incorporation.

Non-profit Operation

Sec. 22. A corporation shall be operated on a non-profit basis for the mutual benefit of its members and patrons. The by-laws of a corporation or its contracts with members and patrons shall contain such provision relative to the disposition of revenues and receipts as may be necessary and appropriate to establish and maintain its non-profit and cooperative character.

Disposition of Property

Sec. 23. (a) The Board of Directors of a corporation shall have full power and authority, without authorization by the members thereof, to authorize the execution and delivery of a mortgage or mortgages or a deed or deeds of trust of, or the pledging or encumbering of, any or all of the property, assets, rights, privileges, licenses, franchises and permits of the corporation, whether acquired or to be acquired, and wherever situated, as well as the revenues therefrom, all upon such terms and conditions as the Board of Directors shall determine, to secure any indebtedness of the corporation to the United States of America or any agency or instrumentality thereof. Any such mortgage or mortgages or deed or deeds of trust shall be exempt from mortgages recordation tax.

(b) A corporation may not otherwise sell, mortgage, lease or otherwise dispose of or encumber all or a substantial portion of its property unless such sale, mortgage, lease or other disposition or encumbrance is authorized by the affirmative vote of not less than two-thirds ($\frac{2}{3}$) of all the members of the corporation; provided, however, that notwithstanding any other provision of this Act, or any other provision of law, the Board of Directors may, upon the authorization of a majority of those members of the corporation present at a meeting of the mem-

bers thereof, the notice of which shall have set forth the proposed action, sell, lease or otherwise dispose of all or a substantial portion of its property to another corporation or a foreign corporation doing business in this State pursuant to this Act or to the holder or holders of any notes, bonds or other evidences of indebtedness issued to the United States of America or any agency or instrumentality thereof.

Non-liability of Members for Debts of Corporation

Sec. 24. No member shall be liable or responsible for any debts of the corporation and the property of the members and shareholders shall not be subject to execution therefor.

Recordation of Mortgages—Effect Thereof

Sec. 25. Any mortgage, deed of trust or other instrument executed by a corporation or foreign corporation doing business in this State pursuant to this Act, which affects real and personal property and which is recorded in the real property records in any county in which such property is located or is to be located, shall have the same force and effect as if the mortgage, deed of trust or other instrument were also recorded, filed or indexed as provided by law in the proper office in such county as a mortgage of personal property. All after-acquired property of such corporation or foreign corporation described or referred to as being mortgaged or pledged in any such mortgage, deed of trust or other instrument, shall become subject to the lien thereof immediately upon the acquisition of such property by such corporation or foreign corporation, whether or not such property was in existence at the time of the execution of such mortgage, deed of trust or other instrument shall constitute notice and otherwise have the same effect with respect to such after-acquired property as it has under the laws relating to recordation, with respect to property owned by such corporation or foreign corporation at the time of the execution of such mortgage, deed of trust or other instrument and therein described or referred to as being mortgaged or pledged thereby. The lien upon personal property of any such mortgage, deed of trust or other instrument shall, after recordation thereof, continue in existence and of record for the period of time specified therein without the refiling thereof or the filing of any renewal certificate, affidavit or other supplemental information required by the laws relating to the renewal, maintenance or extension of liens upon personal property.

Construction Standards

Sec. 26. Construction of telephone lines and facilities by a corporation shall, as a minimum requirement, comply with the standards of the National Electrical Safety Code in effect at the time of such construction.

Directors, Officers or Members—Notaries

Sec. 27. No person who is authorized to take acknowledgments under the laws of this State shall be disqualified from taking acknowledgments of instruments executed in favor of a corporation or to which it is a party, by reason of being an officer, director, or member of such corporation.

Fees

Sec. 28. The Secretary of State shall charge and collect for:

- (a) Filing articles of incorporation, Ten Dollars (\$10);
- (b) Filing articles of amendment, Two Dollars and Fifty Cents (\$2.50);
- (c) Filing articles of consolidation, Ten Dollars (\$10);
- (d) Filing certificate of election to dissolve, Two Dollars and Fifty Cents (\$2.50);
- (e) Filing articles of dissolution, Two Dollars and Fifty Cents (\$2.50);
- (f) Filing certificate of change of principal office, Two Dollars and Fifty Cents (\$2.50).

Exemption from Excise Taxes. License Fee

Sec. 29. Each corporation doing business in this State pursuant to this Act shall pay annually on or before the first day of July to the Secretary of State a fee of Ten Dollars (\$10), but shall be exempt from all other excise taxes. However, a corporation is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if the corporation is exempted by that chapter.

Connection and Interconnection of Facilities

Sec. 30. Any corporation doing business in this State pursuant to this Act (such corporation being designated in this section as "applicant") shall have the right to require any person furnishing telephone service to the public in this State (such person being designated in this section as "company") to interconnect the company's lines, facilities or systems with, or otherwise make available such lines, facilities or systems to, the applicant's telephone lines, facilities or systems, in order to provide a continuous line of communication for the applicant's subscribers. The provisions of Articles 1426, 1427, 1430, 1431, and 1432 of the Revised Civil Statutes of Texas of 1925 may be enforced by or against any corporation created by virtue of this Act.

Securities Act Exemption

Sec. 31. The provisions of the Texas Securities Act (Chapter 100, Acts, Forty-fourth Legislature, Regular Session)¹ shall not apply to any note, bond or other evidence of indebtedness issued by any corporation doing business in this State pursuant to

this Act, to the United States of America or any agency or instrumentality thereof, or to any mortgage, deed of trust or other instrument executed to secure the same. The provisions of said Securities Act shall not apply to the issuance of membership certificates by any corporation or any such foreign corporation.

¹ Art. 600a (repealed; see, now, art. 581-1 et seq.).

Defectively Organized Corporations

Sec. 32. In the event any corporation has filed defective articles of incorporation or has failed to do all things necessary to perfect its corporate organization, it may, nevertheless, file corrected articles of incorporation or amend the original articles and do and perform all acts and things necessary in the premises for the correction of such defects. The action so taken shall be valid and binding upon all persons concerned and the capacity of such corporation to file corrected articles of incorporation or amendments to the original articles, or to do and perform all acts and things necessary in the premises shall not be questioned.

Act Extended to Existing Corporations

Sec. 33. Any existing cooperative or non-profit corporation or association, organized under any other law of this State, for the purpose of engaging in furnishing rural telephone service, may, by a majority vote of the members present in person or by proxy at a meeting called for that purpose, amend its articles of incorporation so as to comply with this Act.

Separability of Provisions

Sec. 34. If any provision of this Act, or the application of such provision to any person or circumstance is held invalid, the remainder of the Act and the application of such provisions to other persons or circumstances shall not be affected thereby.

[Acts 1950, 51st Leg., 1st C.S., p. 33, ch. 4. Amended by Acts 1953, 53rd Leg., p. 595, ch. 238, §§ 1, 2; Acts 1975, 64th Leg., p. 343, ch. 145, § 1, eff. May 8, 1975; Acts 1975, 64th Leg., p. 344, ch. 146, § 1, eff. May 8, 1975; Acts 1981, 67th Leg., p. 1778, ch. 389, § 31, eff. Jan. 1, 1982.]

Section 1 of the 1981 amendatory act enacted Title 2 of the Tax Code.

Art. 1528d. Automobile Club Services Act**Short Title**

Sec. 1. This Act shall be known and cited as the Automobile Club Services Act.

Definitions

Sec. 2. (a) "Automobile Club" shall mean any person who in consideration of dues, assessments, or periodic payments of money, promises its members or subscribers to assist them in matters relating to travel and the operation, use or maintenance

of a motor vehicle in the supplying of services which by way of illustration and not by way of limitation may include such services as community traffic safety service, travel and touring service, theft or reward service, map service, towing service, emergency road service, bail bond service and legal fee reimbursement service in the defense of traffic offenses, and the purchase of accidental injury and death benefits insurance coverage from a duly authorized insurance company.

(b) "Person" shall mean any person, firm, partnership, corporation or association which conducts an Automobile Club Service business in this State.

Certificate of Authority Required

Sec. 3. From and after the effective date of this Act, it shall be unlawful for any person to engage in the business of an Automobile Club as herein defined, without having first met the requirements and obtained a certificate of authority from the Secretary of State as hereinafter provided for. The Secretary of State shall promulgate, prescribe and furnish such forms as may be necessary for any applicant to meet the requirements of this Act and shall furnish such forms, upon request, to those applicants requesting such forms; provided, however, nothing herein shall relieve any Automobile Club from the obligation to furnish services under such contracts or membership agreements that have been entered into prior to the effective date of this Act.

Application for Certificate of Authority and Deposit of Security

Sec. 4. The application for a certificate of authority as an Automobile Club to be filed with the Secretary of State shall be in such form and detail as the Secretary of State may require and shall be executed under oath by such Club's president or other principal officer and there shall be filed with the application the following:

(a) If such Club is a corporation, a certificate from the Secretary of State that it has complied with the corporation laws of this State.

(b) If not incorporated, a list of all persons owning an interest in the Automobile Club, the officers thereof and the parties to any operating agreement or management agreement affecting the Automobile Club together with a copy of any such agreement.

(c) The first year's annual license fee in the amount of One Hundred Dollars (\$100) shall accompany such application.

(d) Proof of security having been deposited with the State or pledged by the Club in such form as the Secretary of State may prescribe in any of the following ways: The sum of Twenty-five Thousand Dollars (\$25,000) in cash or Twenty-five Thousand

Dollars (\$25,000) in securities approved by the Secretary of State or in lieu thereof, a bond in such form as the Secretary of State may prescribe in the amount of Twenty-five Thousand Dollars (\$25,000) to the State of Texas and executed by a corporate surety licensed to do business in the State of Texas and conditioned upon the faithful performance in the selling or rendering of Automobile Club service and payment of any fines or penalties levied against it for failure to comply with the provisions of this Act; provided however, that the aggregate liability of the surety for all breaches of the conditions of the bond and for the payment of all fines and penalties shall, in no event, exceed the amount of said bond.

Upon filing of the application, certificates or security as above provided for, it shall be the duty of the Secretary of State within fifteen (15) days thereafter to issue or deny a certificate of authority to said Automobile Club. Failure of the Secretary of State to issue such certificate within said fifteen (15) day period shall entitle the applicant to a refund of all moneys and security deposited with the application.

The deposit herein provided for shall thereafter be maintained so long as said Club shall have outstanding any liability or obligation in this State. Upon proper showing, to the satisfaction of the Secretary of State, that the Club has ceased to do business and that all liabilities and obligations of the Club have been satisfied, the Secretary of State is hereby authorized to return the security to the Club or to deliver the security in accordance with any order of a court of competent jurisdiction.

Certificate of Authority—Annual Renewal Required

Sec. 5. Every certificate of authority issued hereunder shall expire annually on August 31, of each year unless sooner revoked or suspended as hereinafter provided and application for renewal of such certificate of authority shall be filed upon such forms as are provided by the Secretary of State and shall contain such information as the Secretary of State may prescribe. The annual license fee for renewal of such certificate of authority shall be One Hundred Dollars (\$100).

Registration of Salesmen or Agents

Sec. 6. Each and every Automobile Club operating in this State pursuant to a certificate of authority issued hereunder shall within thirty (30) days of the date of employment, file with the Secretary of State a notice of appointment of salesmen or agents by an Automobile Club to sell memberships in the Automobile Club to the public. This notification shall be upon such form as the Secretary of State may prescribe and shall contain the name, address, age, sex and social security number of such salesman or agent, and also contain proof satisfactory to

the Secretary of State that such applicant is of good moral character. Upon termination of any salesman's or agent's employment by an Automobile Club, such Automobile Club shall within thirty (30) days thereafter notify the Secretary of State of such termination. The registration fee for salesmen or agents of Automobile Clubs shall be Five Dollars (\$5) annually and shall be renewed each twelve (12) months after its issuance.

Revocation or Suspension of Certificate

Sec. 7. If the Secretary of State at any time for good cause shown, and after public hearing, shall determine that an Automobile Club has violated a provision of this Act, that it is not operating an Automobile Club as defined herein, that it is insolvent, that its assets are less than its liabilities, that it refuses to submit to an examination by the Secretary of State, that it is transacting business fraudulently, or that any owner, officer or operating manager is not of good moral character, he shall thereupon revoke or suspend its certificate of authority and shall give notice thereof to the public in such manner as he shall deem proper; provided however, that any person aggrieved by any decision of the Secretary of State shall have the right to appeal such decision to the District Court in the county of the aggrieved person's residence within sixty (60) days after the date of notice by registered mail of such decision but not thereafter.

Advertising Limitation—Exemptions

Sec. 8. (a) Automobile Clubs operating hereunder shall make no reference to their certificate of authority or approval from the Secretary of State in any advertising, circular, contract or membership card nor shall such Automobile Clubs advertise or describe their services in such a manner as would lead the public to believe such services include automobile insurance.

(b) All Automobile Clubs operating pursuant to a certificate of authority issued hereunder shall be exempt from the operation of all insurance laws of this State, except that accidental injury and death benefits furnished members of such Automobile Clubs shall be covered under a group policy issued to the Automobile Club for the benefit of its members and such policy shall be issued by a company licensed to write such insurance in this State. Any such group policy issued to the Automobile Club shall be evidenced to the membership of said Club by a certificate of participation in said group policy that shall state on the face of said certificate in at least fourteen-point black bold-face type that the certificate is only a "certificate of participation in an accidental injury and death group policy and is not automobile liability insurance coverage."

Members to be Furnished Description of Services

Sec. 9. Every Automobile Club operating under the provisions of this Act shall furnish to its members a service contract or membership card together with the following information:

- (a) The exact name of the Automobile Club.
- (b) The exact location of the Automobile Club's home office, and of its usual place of business in this State, giving street, number and city.
- (c) A description of the services or benefits to which the member is entitled.
- (d) The completed application and the description of services shall constitute the service contract.

Secretary of State to be Furnished Service Contract

Sec. 10. Every Automobile Club operating under the provisions of this Act shall furnish to the Secretary of State a certified copy of the service contract and if said Club provides participation in a group accidental injury or death policy, then a copy of the certificate of participation furnished the member shall be filed with the certified copy of the service contract together with the following information:

- (a) The exact name of the Automobile Club.
- (b) The exact location of the Automobile Club's home office, and of its usual place of business in this State, giving street, number and city.
- (c) Any change, addition or supplement to the service contract, change of office location or change of name shall be filed with the Secretary of State.

Fees

Sec. 11. All fees collected hereunder by the Secretary of State shall be deposited with the State Treasurer to the credit of the General Revenue Fund.

Solicitation for unauthorized Automobile Clubs Prohibited

Sec. 12. No person shall solicit, or aid in the solicitation of, another person to purchase a service contract or membership issued by an Automobile Club not holding a valid certificate of authority under the terms of this Act.

Penalties

Sec. 13. Any person violating any of the provisions of this Act 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), and by imprisonment in the county jail for not more than six (6) months.

Severability Clause

Sec. 14. If any word, phrase, sentence or provision of this Act is determined to be invalid, such invalidity shall not affect the other provisions of

this Act and they shall be given effect without the invalid provision, and to this end the provisions of this Act are declared to be severable.

Effective Date

Sec. 15. This Act shall become effective from and after September 1, 1963.

[Acts 1963, 58th Leg., p. 678, ch. 250. Amended by Acts 1983, 68th Leg., p. 318, ch. 69, § 12, eff. Sept. 1, 1983.]

Section 15 of the 1983 amendatory act provides:

"This Act applies only to a fee becoming due on or after the effective date of this Act. A fee becoming due before the effective date of this Act is governed by the law in effect when the fee became due, and that law is continued in effect for that purpose."

Art. 1528e. Professional Corporation Act

Title

Sec. 1. This Act shall be known and may be cited as "The Texas Professional Corporation Act."

Sections, Subsections and Captions

Sec. 2. The division of this Act into sections and subsections and the use of captions in connection therewith are solely for convenience and shall have no legal effect in construing the provisions of this Act.

Definitions

Sec. 3. As used in this Act, unless the context otherwise requires, the term:

(a) "Professional Service" means any type of personal service which requires as a condition precedent to the rendering of such service, the obtaining of a license, permit, certificate of registration or other legal authorization, and which prior to the passage of this Act and by reason of law, could not be performed by a corporation, including by way of example and not in limitation of the generality of the foregoing provisions of this definition, the personal services rendered by architects, attorneys-at-law, certified public accountants, dentists, public accountants, and veterinarians; provided, however, that physicians, surgeons and other doctors of medicine are specifically excluded from the operations of this Act, since there are established precedents allowing them to associate for the practice of medicine in joint stock companies.

(b) "Professional Corporation" means a corporation organized under this Act for the sole and specific purpose of rendering professional service and which has as its shareholders only individuals who themselves are duly licensed or otherwise duly authorized within this state to render the same professional service as the corporation.

Articles of Incorporation

Sec. 4. One or more individuals, each of whom is licensed or otherwise legally authorized to render

the same kind of professional service within this state, may incorporate a professional corporation by filing the original and a copy of Articles of Incorporation with the Secretary of State. No professional corporation organized under this Act shall render more than one kind of professional service. The Articles of Incorporation shall set forth:

(a) The purpose for which the corporation is organized, including a statement of the one specific kind of professional service to be rendered by the corporation.

(b) The name of the corporation.

(c) The names and addresses of the individuals who are to be the shareholders of the corporation.

(d) The number of directors constituting the initial Board of Directors and the names and addresses of the persons who are to serve as the initial directors.

(e) The address of the principal office of the corporation.

(f) If the duration of the corporation is not to be perpetual, the period of its duration.

(g) The names and addresses of the Incorporators, each of whom must be duly licensed or otherwise legally authorized to render in this state the specific kind of professional service to be rendered by the corporation.

(h) Such other provisions, not inconsistent with law, which the shareholders may elect to set forth for the regulation of the internal affairs of the corporation.

Applicability of Texas Business Corporation Act

Sec. 5. The Texas Business Corporation Act shall be applicable to professional corporations, except to the extent that the provisions of the Texas Business Corporation Act conflict with the provisions of this Act; and professional corporations shall enjoy the powers and privileges and be subject to the duties, restrictions and liabilities of other business corporations except insofar as the same may be limited or enlarged by this Act. This Act shall take precedence in the event of any conflict with the provisions of the Texas Business Corporation Act or the law. The filing fee for a document under this Act is the same as the filing fee for a similar document filed under the Texas Business Corporation Act.

Purpose

Sec. 6. A professional corporation may be organized under this Act only for the purpose of rendering one specific type of professional service and services ancillary thereto.

Powers

Sec. 7. A professional corporation organized under this Act shall have power:

- (a) To have perpetual succession.
- (b) To sue and be sued in its corporate name.
- (c) To acquire, own, improve, use and otherwise deal with real or personal property in its own name.
- (d) To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets.
- (e) To make contracts and incur liabilities, borrow money at such rates of interest as its Board of Directors may determine, issue its notes, bonds and other obligations, and secure any of its obligations by a mortgage or pledge of all or any of its property and income.
- (f) To pay pensions and establish pension plans, pension trusts, profit sharing plans and trusts, health, accident and hospitalization plans, and other deferred compensation and incentive plans for its employees.
- (g) To insure the life of any shareholder, director, officer, agent or employee, and to continue such insurance after the relationship terminates.
- (h) To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

Name

Sec. 8. A professional corporation may adopt any name that is not contrary to the law or ethics regulating the practice of the professional service rendered through the professional corporation. A professional corporation may use the initials "P.C." in its corporate name in lieu of the word, or in lieu of the abbreviation of the word, "corporation," "company," or "incorporated."

Board of Directors

Sec. 9. A professional corporation shall be governed by a Board of one or more Directors, which shall have the power to manage the business and affairs of the corporation, and the continuing authority to make management decisions on its behalf. No person not duly licensed or otherwise duly authorized to render the professional service of the corporation shall be a member of the Board of Directors. The number of directors shall be fixed by the bylaws of the professional corporation or by the Articles of Incorporation if such articles specifically prescribe the number of directors.

Officers

Sec. 10. The Board of Directors shall elect a President and a Secretary and such other officers as it may deem desirable to have to conduct the affairs

of the professional corporation. One person may serve as both President and Secretary. No person not duly licensed or otherwise duly authorized to render the professional service of the professional corporation may hold an office.

By-laws

Sec. 11. The shareholders may adopt by-laws for the regulation of the affairs of the professional corporation, or if such authority is given by the Articles of Incorporation, the shareholders may delegate to the Board of Directors the power to make and amend by-laws. The by-laws shall contain such provisions for the regulation and management of the affairs of the professional corporation as are not inconsistent with law and the Articles of Incorporation.

Issuance and Transfer of Shares

Sec. 12. A professional corporation may issue shares representing ownership of the capital of the professional corporation only to individuals who are duly licensed or otherwise legally authorized to render the same type of professional service as that for which the corporation was organized. Except to the extent provided in the Articles of Incorporation, the bylaws or any applicable stock purchase or redemption agreement, shares representing ownership of professional corporation capital shall be freely transferable by any shareholder to any other shareholder, or to the professional corporation which issued such shares or to any person who is not a shareholder, provided such person is duly licensed or qualified under the laws of this state to render the same type of professional service which the corporation was organized to render, and such transferee shall thereupon become a shareholder and be entitled to participate in the management, affairs, and profits of the professional corporation. Any restriction on the transfer of shares imposed by the Articles of Incorporation, the bylaws or any stock purchase or redemption agreement shall be written or printed on all certificates representing shares issued to shareholders, unless such restrictions are incorporated by reference pursuant to the provisions of the Texas Business Corporation Act.

Redemption of Shares

Sec. 13. A professional corporation shall have the power to redeem the shares of any shareholder, or the shares of a deceased shareholder, upon such terms as may be agreed upon by the Board of Directors and such shareholder or his personal representative, or at such price and upon such terms as may be provided in the Articles of Incorporation, the bylaws, or any applicable stock purchase or redemption agreement.

Legal Disqualification

Sec. 14. If any shareholder, officer or director of a professional corporation, or any agent or employee thereof who has been rendering professional service for or with it of the same type which such professional corporation was organized to render, becomes legally disqualified to render such professional service, he shall sever all employment with such professional corporation and shall terminate all financial interest therein forthwith; and such corporation shall thereupon purchase or cause to be purchased from him all shares owned by him in such professional corporation, at such price and upon such terms as may be provided in the Articles of Incorporation, the bylaws or any applicable stock purchase or redemption agreement. Likewise, if any person who is not licensed or duly authorized to render the professional service which a professional corporation was organized to render should succeed to the interest of any shareholder of such professional corporation, the person holding such interest shall terminate all financial interest in such professional corporation forthwith; and such corporation shall thereupon purchase or cause to be purchased from such person all shares owned by such person in such professional corporation, at such price and upon such terms as may be provided in the Articles of Incorporation, the bylaws or any applicable stock purchase or redemption agreement.

Rendition of Professional Services

Sec. 15. A professional corporation may render professional service only through its officers, employees and agents who are duly licensed to render such professional service in this state; provided, however, that this provision shall not be interpreted to include within such prohibition employees such as clerks, secretaries, bookkeepers, technicians, nurses, assistants and other individuals who are not usually and ordinarily considered by custom and practice to be rendering professional service for which a license or other legal authorization is required; and further provided, that no person shall, under the guise of employment, practice a profession unless duly licensed or otherwise legally authorized to practice that profession under the laws of this state.

Professional Relationships not Affected

Sec. 16. The provisions of this Act shall not be construed to alter or affect the professional relationship between a person furnishing professional service and a person receiving such service, and all such confidential relationships enjoyed under this state shall remain unchanged. Nothing in this Act shall remove or diminish any rights at law which a person receiving professional services shall have against a person furnishing professional services for errors, omissions, negligence, incompetence, or malfeasance. The corporation shall be jointly and

severally liable for such professional errors, omissions, negligence, incompetence, or malfeasance on the part of any officer or employee thereof.

Continuity of Existence

Sec. 17. Unless the Articles of Incorporation expressly provide otherwise, a professional corporation shall continue as a separate entity for all purposes and for such period of time as is provided in the Articles of Incorporation until dissolved by a vote of its shareholders. A professional corporation shall continue to exist regardless of the death, incompetency, bankruptcy, resignation, withdrawal, retirement or expulsion of any one or more of its shareholders or the transfer of any of its shares to any new holder or the happening of any other event which under the laws of this state and under like circumstances would cause a dissolution of a partnership, it being the intent of this Section that such professional corporation shall have continuity of life independent of the life or status of its shareholders. No shareholder shall have power to dissolve the professional corporation by his independent act of any kind.

Dissolution

Sec. 18. A professional corporation may be dissolved at any time by the affirmative vote of the holders of at least two-thirds of the outstanding shares of the corporation by a meeting called and held in accordance with the bylaws or by unanimous written consent of all shareholders without the necessity of a meeting. The resolution (noting the shares voting for and against such resolution) or written consent, certified by the President or a Vice-President, or the Secretary of the corporation, and a copy of the resolution or consent shall be filed in the office of the Secretary of State and the dissolution shall be effective from the time of such filing. In the event of a dissolution of a professional corporation, the Board of Directors, as Trustees of the property and assets of the corporation, shall apply the assets first to the payment of debts of the corporation and second, to or among the shareholders, as the Articles of Incorporation shall provide.

Exemption from Securities Laws

Sec. 19. The sale, issuance or offering of any capital stock of a professional corporation to persons permitted by the provisions of this Act to own such capital stock are hereby exempted from all provisions of the laws of this state, other than this Act, which provide for supervision, registration or regulation in connection with the sale, issuance or offering of securities; and the sale, issuance or offering of any such capital stock to such persons shall be legal without any action or approval whatsoever on the part of any official or state regulatory agency authorized to license, regulate, or supervise the sale, issuance or offering of securities.

Effective Date

Sec. 20. This Act shall be effective on and after January 1, 1970.

[Acts 1969, 61st Leg., p. 2304, ch. 779, eff. Jan. 1, 1970. Amended by Acts 1975, 64th Leg., p. 243, ch. 92, § 1, eff. April 30, 1975; Acts 1977, 65th Leg., p. 1613, ch. 630, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 219, ch. 120, §§ 16, 17, eff. May 19, 1979; Acts 1983, 68th Leg., p. 318, ch. 69, § 13, eff. Sept. 1, 1983.]

Section 15 of the 1983 amendatory act provides:

"This Act applies only to a fee becoming due on or after the effective date of this Act. A fee becoming due before the effective date of this Act is governed by the law in effect when the fee became due, and that law is continued in effect for that purpose."

Art. 1528f. Professional Association Act**Short Title**

Sec. 1. This Act may be cited as the Texas Professional Association Act.

Authority

Sec. 2. (A) Formation. Any one or more persons duly licensed to practice a profession under the laws of this state may, by complying with this Act, form a professional association, as distinguished from either a partnership or a corporation, by associating themselves for the purpose of performing professional services and dividing the gains therefrom as stated in articles of association or bylaws.

(B) Licenses. All members of the association shall be licensed to perform the type of professional service for which the association is formed.

Definitions

Sec. 3. As used in this Act, the term "professional service" means any type of personal service to the public which requires as a condition precedent to the rendering of such service the obtaining of a license, and which service by law cannot be performed by a corporation. The term "license" includes a license, certificate of registration or any other evidence of the satisfaction of state requirements.

Name

Sec. 4. A professional association shall adopt a name which shall be followed by the word or words "Associated," "Association," "Professional Association," "and Associates," or the abbreviation "Assoc." or "P.A."; provided, and except, however, a professional association shall not adopt or make use of any name which is contrary to or in conflict with any law or ethics regulating the practice or practitioners of any professional service rendered through or in connection with the professional association.

Powers concerning Property and Suits

Sec. 5. (A) Property. A professional association may in its own name invest its funds in real estate, mortgages, stocks, bonds, or any other type of investment, and may own real or personal property necessary or appropriate for rendering its professional service. Any investment or property so owned may be transferred in the association name by action of the Board of Directors or Executive Committee.

(B) Suits. An association shall have power to sue and be sued, complain and defend in its association name.

Licensed Individuals as Employees of Association—Prohibition

Sec. 6. Each individual licensed in this state to perform professional services who is employed by a professional association shall remain subject to reprimand or discipline for his conduct under the provisions of the licensing statute pursuant to which he is licensed.

Professional Relations

Sec. 7. This Act does not alter any law applicable to the relationship between a person furnishing professional service and a person receiving such professional service including liability arising out of such professional service.

Articles of Association

Sec. 8. (A) Required provisions. The articles of association shall set forth:

- (1) The name and address of the association
- (2) The period of duration
- (3) The type of professional service to be performed
- (4) The names and addresses of each of the original members
- (5) A statement that each of the original members is licensed to perform the type of professional service for which the association is formed.

(B) Continuity. Articles of association may provide that a professional association

(1) shall continue as a separate entity independent of its members, for all purposes, for such period of time as provided in the articles, or until dissolved by a vote of two-thirds of the members, and

(2) shall continue notwithstanding the death, insanity, incompetency, conviction for felony, resignation, withdrawal, transfer of membership, retirement, or expulsion of any one or more of the members (except the last surviving member), the admission of or transfer of membership to any new member or members, or the happening of any other

event, which under the law of this state and under like circumstances, would work a dissolution of a partnership.

(C) Power to dissolve. The articles shall provide that no member of a professional association shall have the power to dissolve the association by his independent act of any kind.

(D) Optional provisions. The articles of association may set forth any other provision, not inconsistent with the law, which the members elect to set forth for the regulation of the internal affairs of the association.

(E) Execution. The articles of association shall be signed and verified by each of the members.

Governing Body; Officers

Sec. 9. (A) Board or committee. A professional association organized pursuant to the provisions of this Act shall be governed by a Board of Directors or an Executive Committee elected by the members, and represented by officers elected by the Board of Directors or Executive Committee, so that centralization of management will be assured.

(B) Member's power to bind. No member shall have the power to bind the association within the scope of the association's business or profession merely by virtue of his being a member of the association.

(C) Qualification of officers and board or committee members. Officers and members of the Board of Directors or Executive Committee shall be members of the professional association. Officers need not be members of the Board of Directors or Executive Committee except that the President shall be a member of the Board of Directors or Executive Committee.

(D) Bylaws. The members may adopt such bylaws as they may deem proper, or the power to promulgate bylaws of the association may be delegated by the articles of association to the Board of Directors or Executive Committee, as the members may decide.

(E) Members' voting rights. Each member shall have power to cast such vote or votes at the meeting of the members as the articles of association shall provide.

(F) Agents and employees. The officers of the professional association may employ such agents or employees of the association as they may deem advisable.

(G) Officers. The officers of the association shall include a President, Vice-President, Secretary, Treasurer, and such other officers as the Board of Directors or Executive Committee may determine. Any one person may serve in more than one office provided that the President and the Secretary of the

professional association shall not be the same person unless the association has only one member.

Shares or Units of Ownership—Transfer

Sec. 10. Shares or units of ownership in a professional association shall be transferable to persons licensed to perform the same type of professional service as that for which the professional association was formed.

Regulation of Practice of Law

Sec. 11. The manner in which lawyers practice law under this Act is subject to the powers of the Supreme Court to regulate the practice of law.

Filing of Articles of Association

Sec. 12. (A) The original and a copy of the articles of association shall be delivered to the Secretary of State. If the Secretary of State finds that the articles of association conform to law, he shall, when all fees have been paid as required by law:

(1) Endorse on the original and the copy the word "Filed," and the month, day, and year of the filing thereof.

(2) File the original in his office.

(3) Issue a certificate of association to which he shall affix the copy.

(B) The certificate of association, together with the copy of the articles of association affixed thereto by the Secretary of State, shall be delivered to the members or their representatives.

Effect of Issuance of Certificate of Association

Sec. 13. Upon the issuance of the certificate of association, the association's existence shall begin.

Amendment of Articles of Association

Sec. 14. (A) Authority to amend. A professional association may amend its articles of association, from time to time, in accordance with the procedure for amendment stated therein or if none is stated therein, by two-thirds vote of its members.

(B) Acts not requiring amendment. Changes in membership or transfer of shares or units of ownership shall not require amendment.

Articles of Amendment

Sec. 15. The Articles of amendment shall be executed by the association by its president or a vice-president and by its secretary or an assistant secretary, and certified by one of the officers signing such articles, and shall set forth:

(1) The name and address of the association

(2) If the amendment alters any provision of the original or amended articles of association, an identification by reference or description of the altered provision and a statement of its text as it is amend-

ed to read. If the amendment is an addition to the original or amended articles of association, a statement of that fact and the full text of each provision added

(3) The date of the adoption of the amendment

(4) A statement that the amendment was adopted in accordance with the procedure for amendment stated in the articles of association, or, if none is stated therein, a statement that the amendment was adopted by two-thirds vote of its members.

Filing of Articles of Amendment

Sec. 16. (A) The original and a copy of the articles of amendment shall be delivered to the Secretary of State. If the Secretary of State finds that the articles of amendment conform to law, he shall, when all fees have been paid as required by law:

(1) Endorse on the original and the copy the word "Filed," and the month, day, and year of the filing thereof.

(2) File the original in his office.

(3) Issue a certificate of amendment to which he shall affix the copy.

(B) The certificate of amendment, together with the copy of the articles of amendment affixed thereto by the Secretary of State, shall be delivered to the association or its representatives.

Effect of Certificate of Amendment

Sec. 17. (A) Issuance. Upon the issuance of the certificate of amendment by the Secretary of State, the amendment shall become effective and the articles of association shall be deemed to be amended accordingly.

(B) Prior rights. No amendment shall affect any existing cause of action in favor of or against the association, or any pending suit to which the association shall be a party, or the existing rights of persons other than members. If the association name is changed by amendment, no suit brought by or against the association under its former name shall abate for that reason.

Articles of Dissolution

Sec. 18. The articles of dissolution shall be executed by the association by its president or a vice-president and by its secretary or an assistant secretary, and verified by one of the officers signing such articles. If there are no living officers of the association, the articles shall be executed by the legal representative of the last surviving officer. The articles of dissolution shall set forth:

(1) The name and address of the association

(2) The names and respective addresses of its officers

(3) The names and respective addresses of the members of its Board of Directors or Executive Committee

(4) A statement that the association is dissolving in accordance with its articles of association or, if there is no dissolution provision in the articles, by two-thirds vote of its members.

Filing of Articles of Dissolution

Sec. 19. (A) The original and a copy of the articles of dissolution shall be delivered to the Secretary of State. If the Secretary of State finds that the articles of dissolution conform to law, he shall, when all fees have been paid as required by law:

(1) Endorse on the original and the copy the word "Filed," and the month, day, and year of the filing thereof.

(2) File the original in his office.

(3) Issue a certificate of dissolution to which he shall affix the copy.

(B) The certificate of dissolution, together with the copy of the articles of dissolution affixed thereto by the Secretary of State, shall be delivered to the association or its representatives.

Effect of Certificate of Dissolution

Sec. 20. Upon the issuance of the certificate of dissolution by the Secretary of State, the dissolution shall become effective and the existence of the association shall cease except for the purpose of suits, other proceedings and acts necessary for the winding up of the association.

Annual Statement

Sec. 21. A professional association shall in June of each year file with the Secretary of State a statement showing the name and address of the association; the names and addresses of all members of the association, and all officers and all members of the Board of Directors or Executive Committee; and shall certify that all members are licensed to perform the type of professional service for which the association is formed. The statement shall be on such form as the Secretary of State shall prescribe and furnish. It shall be signed by the president or a vice-president and by the secretary or an assistant secretary of the association, and verified by one of the officers signing the statement.

Fees

Sec. 22. The Secretary of State is authorized and required to collect for the use of the state the following fees:

(1) Filing articles of association and issuing a certificate of association, Two Hundred Dollars (\$200.00)

(2) Filing annual statement, Thirty-Five Dollars (\$35.00)

(3) Filing any other document, the fee provided for the filing of a similar document under the Texas Business Corporation Act.

Existing Associations

Sec. 23. Any existing association may become subject to this Act by complying with its terms and filing requirements.

Association Liability

Sec. 24. Nothing in this Act shall remove or diminish any rights at law which a person receiving professional services shall have against a person furnishing professional services for errors, omissions, negligence, incompetency or malfeasance. The association (but not the individual members) shall be jointly and severally liable for such professional errors, omissions, negligence, incompetency, or malfeasance on the part of any officer or employee thereof when such officer or employee is in the course of his employment for the association.

Applicability of Business Corporation Act

Sec. 25. The Texas Business Corporation Act shall be applicable to professional associations, except to the extent that the provisions of the Texas Business Corporation Act conflict with the provisions of this Act; and professional associations shall enjoy the powers and privileges and be subject to the duties, restrictions and liabilities of business corporations except insofar as the same may be limited or enlarged by this Act. This Act shall take precedence in the event of any conflict with the provisions of the Texas Business Corporation Act or the law.

[Acts 1969, 62nd Leg., p. 2513, ch. 840, eff. June 18, 1969. Amended by Acts 1971, 62nd Leg., p. 888, ch. 118, §§ 1 to 6, eff. May 10, 1971; Acts 1979, 66th Leg., p. 220, ch. 120, §§ 18 to 22, eff. May 9, 1979; Acts 1983, 68th Leg., p. 319, ch. 69, § 14, eff. Sept. 1, 1983.]

Section 15 of the 1983 amendatory act provides:

"This Act applies only to a fee becoming due on or after the effective date of this Act. A fee becoming due before the effective date of this Act is governed by the law in effect when the fee became due, and that law is continued in effect for that purpose."

Art. 1528g. Business Development Corporations

Definitions

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

(1) "Corporation" means a business development corporation created under the terms of this Act.

(2) "Board of directors" means the board of directors of a business development corporation.

(3) "Financial institution" means any banking corporation or trust company, building and loan associ-

ation, governmental agency, insurance company, or related corporation, partnership, foundation, or other institution engaged primarily in lending or investing funds.

(4) "Member" means any financial institution authorized to do business in this state which shall undertake to lend money to a corporation created under the terms of this Act.

(5) "Loan limit" means the maximum amount permitted to be outstanding at one time on loans by a member to a business development corporation.

Incorporation

Sec. 2. (a) Subject to the provisions of the Texas Securities Act,¹ 25 or more persons, a majority of whom shall be residents of this state, may form a business development corporation for the purpose of promoting, developing, and advancing the prosperity and economic welfare of this state.

(b) The corporation may be organized either as a profit making corporation under the Texas Business Corporation Act, or as a nonprofit corporation under the Texas Non-Profit Corporation Act.²

(c) The articles of incorporation shall set forth:

(1) the name of the corporation, which shall include the words "Business Development Corporation";

(2) the purpose or purposes for which the corporation is organized, which shall include the following:

The purposes of the corporation shall be to promote, stimulate, develop, and advance the business prosperity and economic welfare of this state and its citizens; to encourage and assist through loans, investments, or other business transactions, in the location of new business and industry in this state and to rehabilitate and assist existing industry; and so to stimulate and assist in the expansion of all kinds of business activity which will tend to promote the business development and maintain the economic stability of this state, provide maximum opportunities for employment, encourage thrift, and improve the standard of living of the citizens of this state; similarly, to cooperate and act in conjunction with other organizations, public or private, in the promotion and advancement of industrial, commercial, agricultural, and recreational developments in this state; and to provide financing for the promotion, development, and conduct of all kinds of business activity in this state"; and

(3) any other information required by the Texas Business Corporation Act, if the corporation is organized as a profit making corporation, or by the Texas Non-Profit Corporation Act, if the corporation is organized as a nonprofit corporation.

Powers

Sec. 3. (a) In addition to the powers conferred on business corporations generally by the Texas Business Corporation Act, or if the corporation is organized as a nonprofit corporation, by the Texas Non-Profit Corporation Act, the corporation has the following powers:

(1) to elect, appoint, and employ officers, agents, and employees; to make contracts and incur liabilities for any of the purposes of the corporation;

(2) to borrow money on a secured or unsecured basis to carry out any of the purposes of the corporation; to issue therefor its bonds, debentures, notes, or other evidences of indebtedness, whether secured or unsecured, and to secure any evidence of indebtedness by mortgage, pledge, deed of trust, or other lien on its property, franchises, rights, and privileges of every kind and nature, or any part thereof or interest therein, without securing stockholder or member approval;

(3) to make secured or unsecured loans and to establish and regulate the terms and conditions of these loans and the charges for interest or service connected therewith; however, the corporation shall not approve any application for a loan unless and until the person applying for the loan demonstrates that he has applied for the loan through ordinary banking channels and that the loan has been refused by at least two banks or other financial institutions; it is the intention of the Legislature not to take from the lending institutions of this state any loans desired by these institutions generally in the course of their business;

(4) to purchase, receive, hold, lease, or otherwise acquire, and to sell, convey, transfer, lease, or otherwise dispose of real and personal property, together with such rights and privileges as may be incidental and appurtenant thereto and the use thereof, including, but not restricted to, any real or personal property acquired by the corporation from time to time in the satisfaction of debts or enforcement of obligations;

(5) to acquire improved or unimproved real estate for the purpose of constructing industrial plants or other business establishments thereon or for the purpose of disposing of such real estate to others for the construction of industrial plants or other business establishments; and to acquire, construct or reconstruct, alter, repair, maintain, operate, sell, convey, transfer, lease, or otherwise dispose of industrial plants or business establishments;

(6) to protect its position as creditor by acquiring the goodwill, business, rights, real and personal property including stock, shares, bonds, debentures, notes, and other evidences of indebtedness, and other assets or any part thereof or interest therein, of any persons, firms, corporations, joint-stock companies, associations, or trusts to whom or to which

the corporation has loaned money, and to assume, undertake, or pay the obligations, debts, and liabilities of any such person, firm, corporation, joint-stock company, or trust;

(7) to mortgage, pledge, or otherwise encumber any property, right, or thing of value, acquired pursuant to the powers contained in paragraphs (4), (5), or (6), as security for the payment of any part of the purchase price thereof;

(8) to promote the establishment of local development corporations in the various communities of this state; to enter into agreements with them; and to cooperate with, assist, and otherwise encourage such local foundations;

(9) to participate with any duly authorized federal lending agency in the making of loans.

(b) Any corporation organized under the provisions of this Act shall be a state development company as defined in the Small Business Investment Act of 1958, as amended, Public Law 85-699, 85th Congress,³ or any other similar Federal legislation, and shall be authorized to operate on a statewide basis.

Participation

Sec. 4. All natural persons and corporations authorized to conduct business in this state, including without any implied limitation public utility companies, insurance and casualty companies, and foreign corporations licensed to do business in this state, and all trusts, may acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of any bonds, securities, or other evidences of indebtedness created by, or the shares of capital stock of, the corporation, and while owners of the stock, may exercise all the rights, powers, and privileges of ownership, including the right to vote thereon.

Membership

Sec. 5. (a) Any financial institution may become a member of the corporation and may make loans to the corporation as provided by this Act.

(b) Any financial institution may request membership in the corporation by making application to the board of directors in a manner prescribed by the board of directors, and membership shall be effective upon acceptance of the application by the board of directors.

(c) Any financial institution which becomes a member of the corporation may acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of, any bonds, securities, or other evidences of indebtedness created by, or the shares of the capital stock of, the corporation, and while owner of the stock may exercise all the rights, powers, and privileges of ownership, including the right to vote thereon. However, no member may

acquire capital stock in an amount greater than 10 percent of the loan limit of that member. The amount of capital stock of the corporation which a member may acquire is in addition to the amount of capital stock in corporations which the member may otherwise acquire.

(d) A financial institution which is not a member of the corporation may not acquire any shares of the capital stock of the corporation.

Loans to the Corporation

Sec. 6. (a) Each member of the corporation shall make loans to the corporation when called upon by it to do so on such terms and conditions as shall be approved from time to time by the board of directors.

(b) All loan limits shall be established at the thousand-dollar amount nearest to the amount computed in accordance with the provisions of this section.

(c) No loan to the corporation may be made if immediately thereafter the total amount of the obligations of the corporation would exceed 50 times the capital of the corporation. For the purposes of this subsection, the capital of the corporation includes the amount of the outstanding capital stock of the corporation, whether common or preferred, and the earned or paid-in surplus of the corporation.

(d) The total amount outstanding on loans to the corporation made by any member at any one time, when added to the amount of the investment in the capital stock of the corporation then held by the member, shall not exceed:

(1) twenty percent of the total amount then outstanding on loans to the corporation by all members, including outstanding amounts validly called for loan but not yet loaned;

(2) the following limit, to be determined as of the time such member becomes a member or at any time requested by a member on the basis of the audited balance sheet of such member at the close of its fiscal year immediately preceding its application for membership, or, in the case of an insurance company, its last annual statement to the State Board of Insurance: an amount of two percent of the capital and surplus of commercial banks and trust companies or \$750,000, whichever is the lesser amount; an amount of one percent of the total outstanding loans made by a building and loan or savings and loan association; an amount of one percent of the capital and unassigned surplus of stock insurance companies, except fire insurance companies; an amount of one percent of the unassigned surplus of mutual insurance companies, except fire insurance companies; an amount of one-tenth of one percent of the assets of fire insurance companies; and such limits as may be approved by the board of directors of the corporation for any

government pension fund or for other financial institutions.

(e) Subject to Subsection (d) of this section, each call made by the corporation shall be prorated among the members of the corporation in substantially the same proportion that the adjusted loan limit of each member bears to the aggregate of the adjusted loan limits of all members. The adjusted loan limit of a member shall be the amount of such member's loan limit, reduced by the balance of outstanding loans made by such member to the corporation and the investment in capital stock of the corporation held by such member at the time of such call.

(f) All loans to the corporation by members shall be evidenced by bonds, debentures, notes, or other evidences of indebtedness of the corporation, which shall be freely transferable at all times, and which shall bear interest at a rate of not less than one-quarter of one percent in excess of the rate of interest determined by the board of directors to be the prime rate prevailing at the date of issuance thereof on unsecured commercial loans.

Withdrawal

Sec. 7. Upon written notice to the board of directors six months in advance, a member may withdraw from the corporation at the expiration date of the notice. A member is not obligated to make any loans to the corporation pursuant to calls made subsequent to the expiration date, but a member shall fulfill any obligations which have accrued or for which commitments have been made before the expiration date.

Powers of Members and Stockholders; Voting

Sec. 8. (a) The stockholders and the members of the corporation shall have the following powers:

(1) to determine the number of and elect the directors as provided by Section 9 of this Act;

(2) to make, amend, and repeal bylaws of the corporation; and

(3) to exercise any other powers of the corporation which may be conferred on the stockholders and the members by the bylaws.

(b) Each stockholder has one vote, in person or by proxy, for each share of capital stock held by the stockholder, and each member has one vote, in person or by proxy; however, any member with a loan limit greater than \$1,000 has one additional vote, in person or by proxy, for each additional \$1,000 which the member may have outstanding on loans to the corporation at any one time as determined under the provisions of Section 6 of this Act.

Officers and Directors

Sec. 9. (a) The organization, control, and management of the corporation are vested in a board of not less than 15 nor more than 21 directors.

(b) The board of directors may exercise all the powers of the corporation except those conferred upon the stockholders or members by law or by the bylaws of the corporation.

(c) The board of directors shall choose and appoint a president, a treasurer, and all other agents and officers of the corporation and shall fill all vacancies except vacancies in the board of directors, which shall be filled as provided by Subsection (g) of this section.

(d) The board of directors shall be named in the first instance by the incorporators and shall be elected thereafter at each annual meeting of the corporation, or if no annual meeting is held at the time fixed by the bylaws, at a special meeting held in lieu of the annual meeting.

(e) At any annual meeting or special meeting held in lieu of the annual meeting, the members of the corporation shall elect two-thirds of the directors, and the stockholders shall elect the remaining directors.

(f) The directors shall hold office until the next annual meeting or special meeting of the corporation held in lieu of the annual meeting after their election and until their successors are elected and have qualified, unless sooner removed in accordance with the provisions of the bylaws.

(g) Any vacancy in the office of a director elected by the members shall be filled by the directors elected by the members, and any vacancy in the office of a director elected by the stockholders shall be filled by the directors elected by the stockholders.

Surplus

Sec. 10. (a) The corporation shall set apart as earned surplus not less than 10 percent of its net earnings each year, until such surplus, with any unimpaired surplus paid in, is equal to one-half of the amount paid in on the capital stock then outstanding. The surplus shall be kept to secure against losses and contingencies, and whenever it becomes impaired, it shall be reimbursed in the manner provided for its accumulation.

(b) Net earnings and surplus shall be determined by the board of directors after providing for the required reserves as the directors deem advisable, and the determination of the directors made in good faith shall be conclusive on all persons.

Depositaries

Sec. 11. (a) The corporation may deposit any of its funds in any banking institution which has been

designated as a depository by a vote of the majority of the directors present at an authorized meeting of the board of directors, exclusive of any director who is an officer or director of the depository so designated.

(b) The corporation may not receive money on deposit.

Report of Condition

Sec. 12. The corporation shall make annual reports of its condition to the banking commissioner and the State Board of Insurance, and the corporation shall furnish any information which may from time to time be required by the secretary of state.

[Acts 1971, 62nd Leg., p. 2601, ch. 853, eff. Aug. 30, 1971.]

¹ Article 581-1 et seq.

² Article 1396-1.01 et seq.

³ See 15 U.S.C.A. § 662.

Art. 1528h. Dealing in Acceptances

Any officer, director, employé, or agent of any corporation organized for the purpose of contracting with reference to, or otherwise dealing in acceptances, bills of exchange, bills of lading, warehouse and other receipts growing out, or to be used in aid, of the transportation, warehousing, distribution, or financing of agricultural products, who shall enter into, or cause such corporation to enter into, any contract of acceptance, guaranty, indorsement, or suretyship, without complying with the laws of this State regulating such contracts, shall be fined not less than two hundred nor more than one thousand dollars, or be imprisoned in jail not less than three months nor more than one year, or both.

[Acts 1925, S.B. 84.]

Art. 1528i. Mutual Trust Investment Company Act**Short Title**

Sec. 1. This Act may be cited as the Texas Mutual Trust Investment Company Act.

Definitions

Sec. 2. As used in this Act, the term "mutual trust investment company" means a corporation which is:

(a) an open-end investment company as defined in and subject to an Act of Congress entitled Investment Company Act of 1940, approved August 22, 1940, as amended;¹ and

(b) incorporated in compliance with the provisions of this Act to constitute a medium for the common investment of trust funds held in a fiduciary capacity and for true fiduciary purposes, either alone or with one or more cofiduciaries, by state banks with

trust powers, trust companies, and national banks with trust powers.

115 U.S.C.A. § 80a-1 et seq.

Application of General Corporation Law; Articles of Incorporation

Sec. 3. Such a mutual trust investment company shall be incorporated under and be subject to the general corporation laws of this state except as herein otherwise provided. The incorporators subscribing and acknowledging the articles of incorporation shall consist of five or more persons who are officers or directors of the banks and trust companies causing such mutual trust investment company to be incorporated, and the articles of incorporation shall set forth, in addition to the facts specified in the general corporation laws, the name of each bank and trust company causing such corporation to be incorporated and the amount of stock originally subscribed for by each.

Corporate Powers; Ownership of Stock

Sec. 4. (a) The stock of a mutual trust investment company shall be owned only by state banks with trust powers, trust companies, and national banks with trust powers, acting as fiduciaries, and their cofiduciaries, if any, but may be registered in the name of their nominee or nominees.

(b) The stock of a mutual trust investment company shall not be subject to transfer or assignment except to the mutual trust investment company or to a fiduciary or cofiduciary which becomes successor to the stockholders and which is also a bank or trust company qualified to hold such stock under the provisions of this Act.

(c) A mutual trust investment company shall have not less than five directors who need not be stockholders but shall be officers or directors of banks or trust companies, provided that officers or directors of banks and trust companies not located in this state may not be directors of a mutual trust investment company unless that officer's or director's bank or trust company owns stock in a fiduciary capacity in the mutual trust investment company.

(d) A mutual trust investment company may invest its assets only in those investments in which a trustee may invest under the laws of this state.

(e) A mutual trust investment company may acquire, purchase, or redeem its own stock and shall, by means of contract or of its bylaws, bind itself to acquire, purchase, or redeem its own stock, but it shall not vote upon shares of its own stock.

(f) A mutual trust investment company shall not be responsible for ascertaining the investment powers of any fiduciary who may purchase its stock and shall not be liable for accepting funds from a fiduciary in violation of the restrictions of the will, trust indenture, or other instrument under which such

fiduciary is acting in the absence of actual knowledge of such violation, and shall be accountable only to the fiduciaries who are the owners of its stock.

Purchase of Stock by Fiduciaries; Authority and Restrictions

Sec. 5. (a) State banks with trust powers, trust companies, and national banks with trust powers, acting as a fiduciary and for true fiduciary purposes, either alone or with one or more cofiduciaries, may, if exercising the care of a prudent investor and with the consent of such cofiduciary or cofiduciaries, if any, invest and reinvest funds held in such fiduciary capacity in the shares of stock of a mutual trust investment company except where the will, trust indenture, or other instrument under which such fiduciary is acting prohibits such investment.

(b) A mutual trust investment company shall be permitted to rely on the written statement of any bank or trust company purchasing its stock that the purchase complies with the foregoing requirement.

(c) For purposes of Sections 4 and 5 of this Act, the word "stock" shall mean a unit of participation in the net asset value of one or more of the investment funds of a mutual trust investment company.

Audits and Reports

Sec. 6. (a) A mutual trust investment company shall, at least once during each period of 12 months, cause an adequate audit to be made of the company by auditors responsible only to the board of directors of the company.

(b) A mutual trust investment company shall furnish annually a copy of the audited financial statement to each corporate fiduciary owning stock in the mutual trust investment company.

(c) The reasonable expenses of any such annual audits made by independent public accountants or certified public accountants and the cost of preparing and distributing the reports shall be borne and paid for by the mutual trust investment company.

[Acts 1979, 66th Leg., p. 112, ch. 71, eff. Aug. 27, 1979.]

Art. 1528j. Health Facilities Development Act

Short Title

Sec. 1.01. This Act may be cited as the "Health Facilities Development Act."

Findings, Purpose, Public Policy, and Construction of Act

Sec. 1.02. It is hereby found, determined, and declared that the present and prospective health, safety, and general welfare of the people of this state require the providing by health facilities, as defined in this Act, of adequate, reasonable, and accessible health care, research, and education; that such health facilities in many portions of this state

are presently obsolete, inadequate, or insufficient in number; and that the cost of health care, research, and education within this state has in many cases become excessive. It is the purpose of this Act to enable cities, counties, and hospital districts, as defined in this Act, to create corporations, as defined in this Act, with powers to provide, expand, and improve health facilities, as defined in this Act, determined by such corporations to be needed for the purpose of improving the adequacy, cost, and accessibility of health care, research, and education within this state. It is therefore determined and declared as a matter of public policy that the creation of such corporations, the issuance of revenue bonds and notes by such corporations, and the exercise of the other powers of such corporations, all as herein provided, are in the public interest and in furtherance of an important public purpose. This Act shall therefore be liberally construed in conformity with the intention of the legislature herein expressed.

Definitions

Sec. 1.03. When used in this Act, unless the context requires a different definition:

- (1) "Board of directors" means the board of directors of any corporation organized pursuant to the provisions of this Act.
- (2) "Bonds" means bonds, notes, interim certificates, or other evidences of indebtedness of a corporation issued pursuant to this Act.
- (3) "City" means any municipal corporation of this state presently existing or created hereafter, whether existing or created by general law or pursuant to a home-rule charter.
- (4) "Corporation" means any health facilities development corporation created and existing under the provisions of this Act as a public corporation and constituted authority for the purposes set forth in this Act.
- (5) "Cost" as applied to a health facility, as herein defined, means and includes any and all costs of such health facility and, without limiting the generality of the foregoing, shall include the following:
 - (A) the cost of the acquisition of all land, rights-of-way, options to purchase land, easements, leasehold estates in land, and interests of all kinds in land related to such health facility;
 - (B) the cost of the acquisition, construction, repair, renovation, remodeling, or improvement of all buildings and structures to be used as or in conjunction with such health facility;
 - (C) the cost of site preparation, including the cost of demolishing or removing any buildings or structures the removal of which is necessary or incident to providing such health facility;
 - (D) the cost of architectural, engineering, legal, and related services; the cost of the preparation of plans, specifications, studies, surveys, and estimates of cost and of revenue; and all other expenses necessary or incident to planning, providing, or determining the feasibility and practicability of such health facility;
 - (E) the cost of all machinery, equipment, furnishings, and facilities necessary or incident to the equipping of such health facility so that it may be placed in operation;
 - (F) the cost of financing charges and interest prior to and during construction and for a maximum of two years after completion of construction and the marketing and start-up costs of such health facility prior to and during construction and for a maximum of two years after completion of construction;
 - (G) any and all costs paid or incurred in connection with the financing of such health facility, including out-of-pocket expenses and compensation described in Subsection (e) of Section 4.04 hereof and further including without limitation the cost of financing, legal, accounting, financial advisory, and appraisal fees, expenses, and disbursements; the cost of any policy or policies of title insurance; the cost of printing, engraving, and reproduction services; and the cost of the initial or acceptance fee of any trustee or paying agent; and
 - (H) all direct and indirect costs of the corporation, as herein defined, incurred in connection with providing such health facility, including without limitation reasonable sums to reimburse such corporation for time spent by its agents or employees with respect to providing such health facility and the financing thereof.
- (6) "County" means a political subdivision of the State of Texas created and established under Article IX, Section 1, of the Constitution of Texas.
- (7) "Director" means any member of a board of directors, as herein defined.
- (8) "District" means a hospital district presently existing or created hereafter under authority of the constitution and laws of Texas.
- (9) "Governing body" means, with reference to a sponsoring entity, as herein defined, the board of directors, council, commission, commissioners court, managers, trustees, or similar body charged by law with governance of such sponsoring entity.
- (10) "Health facility" means and includes any real, personal, or mixed property, or any interest therein, the financing, refinancing, acquiring, providing, constructing, enlarging, remodeling, renovating, improving, furnishing, or equipping of which is found by the board of directors of the corporation to be required, necessary, or convenient for health care, research, and education, any one or more,

within this state, regardless of whether such property is in existence or is to be provided after the making of such finding. Without limiting the generality of the foregoing and when found by the board of directors of a corporation, as herein defined, to be so required, necessary, or convenient, "health facility" shall include any combination of one or more of the following:

(A) any land, buildings, equipment, machinery, furniture, facilities, and improvements;

(B) any structure suitable for use as a hospital, clinic, health facility, nursing home, extended-care facility, out-patient facility, rehabilitation facility, pharmacy, medical laboratory, dental laboratory, physicians' office building, laundry facility, administrative facility, computer facility, communication facility, fire-fighting or fire-prevention facility, food service and preparation facility, parking facility or parking area, storage facility, utility facility, x-ray facility, or building related to any health-care or health-care-related facility or system;

(C) any structure suitable for use as a multiunit housing facility for medical staff, nurses, interns, and other employees of a health-care or health-care-related facility or system and the relatives of such persons, patients of a health-care facility, or relatives of patients admitted for treatment or care in a health-care facility;

(D) any structure suitable for use as a medical or dental research facility, medical or dental training facility, or any other facility used in the education or training of health-care personnel;

(E) any property or material used in the landscaping, equipping, or furnishing of a health-care or health-care-related facility or any similar items necessary or convenient for the operation of a health-care or health-care-related facility; and

(F) any other structure, facility, or equipment related to or essential to the operation of any health-care or health-care-related facility or system.

(11) "Resolution" means any resolution, order, ordinance, or other official action by the governing body, as herein defined, of a sponsoring entity, as herein defined.

(12) "Sponsoring entity" means any city, county, or district, all as herein defined.

(13) "User" means the person or persons, whether natural or corporate, who will occupy, operate, manage, or employ a health facility, as herein defined, after the financing, acquisition, or construction of such health facility, whether as owner, purchaser, lessee, manager, or otherwise.

(14) "Health facility" also includes, in addition to those items provided by Subdivision (10) of this section, any adult foster care facility, life-care facility, retirement home, retirement village, home for the aging, or other facility that undertakes to furnish shelter, food, medical attention, nursing ser-

vices, medical services, social activities, or other personal services or attention to an individual for more than one year.

The use of a singular term herein shall also include the plural of such term and the use of a plural term herein shall also include the singular of such term unless the context clearly requires a different connotation.

Authority to Create Corporations and Issue Bonds

Sec. 2.01. There are hereby authorized to be created by sponsoring entities only, in accordance with the procedures set forth in this Act, nonmember, nonstock public corporations with the powers herein set forth for the sole purpose of acquiring, constructing, providing, improving, financing, and refinancing health facilities in order to assist the maintenance of the public health, which purpose is hereby declared to be a public purpose of this state and of every sponsoring entity on behalf of which such a corporation is created hereunder. Every sponsoring entity is hereby authorized to create and to utilize one or more corporations (1) to provide health facilities for the promotion and development of health care, research, and education, all for the public purpose of promoting the health and welfare of the citizens of this state, and (2) to issue bonds on its behalf to finance the cost of health facilities, all as provided in and in accordance with the terms of this Act. No sponsoring entity is or shall be authorized to lend its credit or grant any public money or thing of value in aid of a corporation.

Creation of Corporation; Articles of Incorporation

Sec. 2.02. Whenever the governing body of a sponsoring entity by appropriate resolution finds and determines that it is in the public interest and to the benefit of its residents and the citizens of this state that a corporation be created to promote and develop new, expanded, or improved health facilities in order to assist the maintenance of the public health and the public welfare, the governing body may by appropriate resolution authorize and approve creation of one or more corporations on behalf of the sponsoring entity with the powers set forth in this Act and shall approve proposed articles of incorporation for such corporation. Any number of natural persons, not less than three, each of whom is at least 18 years of age and a resident of the sponsoring entity, may then act as incorporators of such corporation by signing and verifying the articles of incorporation and delivering the original and two copies of the articles of incorporation to the secretary of state. The articles of incorporation of the corporation shall set forth:

(1) the name of the corporation;

(2) a statement that the corporation is a nonprofit public corporation;

(3) the period of duration of the corporation, which may be perpetual;

(4) a statement that the purpose of the corporation is to acquire, construct, provide, improve, finance, and refinance health facilities to assist the maintenance of the public health;

(5) a statement that the corporation has no members and is a nonstock corporation;

(6) any provision for the regulation of the internal affairs of the corporation not inconsistent with law, including any provision which under this Act is required or permitted to be set forth in the bylaws;

(7) the street address of its initial registered office and the name of its initial registered agent at such street address;

(8) the number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as the initial directors;

(9) the name and street address of each incorporator; and

(10) the name and address of the sponsoring entity and a statement that the sponsoring entity has by resolution specifically authorized the corporation to act on its behalf to further the public purpose set forth in the articles of incorporation and has approved the articles of incorporation.

It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this Act. Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the bylaws shall be controlling. In all other cases, whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling.

Certificate of Incorporation

Sec. 2.03. (a) The original and two copies of the articles of incorporation and a certified copy of the resolution by the governing body of the sponsoring entity approving such articles shall be delivered to the secretary of state. If the secretary of state finds that the articles of incorporation conform to the requirements of this Act and have been approved by the governing body of the sponsoring entity, he shall, when all fees have been paid as in this Act prescribed:

(1) endorse on the original and each copy of such articles the word "filed" and the month, day, and year of the filing thereof;

(2) file the original of such articles in his office; and

(3) issue two certificates of incorporation to each of which he shall affix one copy of such articles.

(b) A certificate of incorporation, together with a copy of the articles of incorporation affixed thereto, shall be delivered by the secretary of state to the incorporators or their representative and to the

governing body of the sponsoring entity on behalf of which the corporation was created.

(c) Upon the issuance of the certificate of incorporation, the corporate existence shall begin, and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators and by the sponsoring entity have been complied with and that the corporation has been incorporated under this Act.

Organizational Meeting of Board

Sec. 2.04. After the issuance of the certificate of incorporation, an organizational meeting of the board of directors named in the articles of incorporation shall be held within this state at the call of a majority of the incorporators for the purpose of adopting bylaws and electing officers and for such other purposes as may come before the meeting. The incorporators calling the meeting shall give notice thereof by mail to each director named in the articles of incorporation, which notice shall state the time and place of the meeting and shall be mailed, postage prepaid, not less than five days prior to the time of such meeting.

Amendment of Articles

Sec. 2.05. (a) The articles of incorporation shall be amended at any time and from time to time in any and as many respects as may be desired so long as such articles as amended contain only such provisions as are lawful under this Act when and if the governing body of the sponsoring entity on behalf of which the corporation was created by appropriate resolution finds and determines that such amendment is advisable and authorizes or directs that such amendment be made.

(b) The articles of amendment shall be executed by the corporation by its president or by a vice-president and by its secretary or an assistant secretary or by the presiding officer and the secretary or clerk of the governing body of the sponsoring entity on behalf of which the corporation was created, verified by one of the officers signing such articles, and shall set forth:

(1) the name of the corporation;

(2) if the amendment alters any provision of the original or amended articles of incorporation, an identification by reference or description of the altered provision and a statement of its text as it is amended to read; if the amendment is an addition to the original or amended articles of incorporation, a statement of that fact and the full text of each provision added; and

(3) the name and current address of the sponsoring entity, a statement that such amendment was authorized by the governing body of the sponsoring entity, and the date of the meeting at which the

amendment was adopted or approved by such governing body.

Certificate of Amendment; Effect of Amendment

Sec. 2.06. (a) The original and two copies of the articles of amendment shall be delivered to the secretary of state together with a certified copy of the resolution of the governing body of the sponsoring entity authorizing such articles. If the secretary of state finds that the articles of amendment conform to the requirements of this Act and have been authorized by the governing body of the sponsoring entity on behalf of which the corporation was created, he shall, when all fees have been paid as in this Act prescribed:

(1) endorse on the original and on each copy of such articles the word "filed" and the month, day, and year of the filing thereof;

(2) file the original of such articles in his office; and

(3) issue two certificates of amendment to each of which he shall affix one copy of such articles.

(b) A certificate of amendment, together with a copy of the articles of amendment affixed thereto, shall be delivered by the secretary of state to the corporation or its representative and to the governing body of the sponsoring entity on behalf of which the corporation was created.

(c) Upon the issuance of the certificate of amendment by the secretary of state, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

(d) No amendment shall affect any existing cause of action in favor of or against such corporation, any pending suit to which such corporation shall be a party, or the existing rights of any persons; and, in the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate for that reason.

Restated Articles of Incorporation

Sec. 2.07. (a) A corporation may, by following the procedure to amend the articles of incorporation provided by this Act, including obtaining authorization from the governing body of the sponsoring entity on behalf of which the corporation was created, authorized, execute, and file restated articles of incorporation which may restate either:

(1) the entire text of the articles of incorporation as amended or supplemented by all certificates of amendment previously issued by the secretary of state; or

(2) the entire text of the articles of incorporation as amended or supplemented by all certificates of amendment previously issued by the secretary of state and as further amended by such restated articles of incorporation.

(b) If the restated articles of incorporation restate the entire articles of incorporation as amended and supplemented by all certificates of amendment previously issued by the secretary of state, without making any further amendment thereof, the introductory paragraph shall contain a statement that the instrument accurately copies the articles of incorporation and all amendments thereto that are in effect to date and that the instrument contains no change in the provisions thereof, provided that the number of directors then constituting the board of directors and the names and addresses of the persons then serving as directors may be inserted in lieu of similar information concerning the initial board of directors, and the name and address of each incorporator may be omitted.

(c) If the restated articles of incorporation restate the entire articles of incorporation as amended and supplemented by all certificates of amendment previously issued by the secretary of state and as further amended by such restated articles of incorporation, the instrument containing such articles shall:

(1) set forth for any amendment made by such restated articles of incorporation a statement that each such amendment has been effected in conformity with the provisions of this Act and further set forth the statements required by this Act to be contained in articles of amendment; provided that the full text of such amendments need not be set forth except in the restated articles of incorporation as so amended;

(2) contain a statement that the instrument accurately copies the articles of incorporation and all amendments thereto that are in effect to date and as further amended by such restated articles of incorporation and that the instrument contains no other change in any provision thereof; provided that the number of directors then constituting the board of directors and the names and addresses of the persons then serving as directors may be inserted in lieu of similar information concerning the initial board of directors, and the names and addresses of the incorporators may be omitted; and

(3) restate the entire text of the articles of incorporation as amended and supplemented by all certificates of amendment previously issued by the secretary of state and as further amended by such restated articles of incorporation.

(d) Such restated articles of incorporation shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary or by the presiding officer and the secretary or clerk of the governing body of the sponsoring entity on behalf of which the corporation was created and shall be verified by one of the officers signing such articles.

Restated Certificate of Incorporation

Sec. 2.08. (a) The original and two copies of the restated articles of incorporation and a certified copy of the resolution of the governing body of the sponsoring entity authorizing such articles shall be delivered to the secretary of state. If the secretary of state finds that the restated articles of incorporation conform to the requirements of this Act and have been authorized by the governing body of the sponsoring entity on behalf of which the corporation was created, he shall, when all fees have been paid as in this Act prescribed:

(1) endorse on the original and on each copy of such restated articles the word "filed" and the month, day, and year of the filing thereof;

(2) file the original of such restated articles in his office; and

(3) issue two restated certificates of incorporation to each of which he shall affix one copy of such restated articles.

(b) A restated certificate of incorporation, together with a copy of the restated articles of incorporation affixed thereto, shall be delivered by the secretary of state to the corporation or its representative and to the governing body of the sponsoring entity on behalf of which the corporation was created.

(c) Upon the issuance of the restated certificate of incorporation by the secretary of state, the original articles of incorporation and all amendments thereto shall be superseded and the restated articles of incorporation shall be deemed to be articles of incorporation of the corporation.

Registered Office and Agent

Sec. 3.01. Each corporation shall have and continuously maintain in this state:

(1) a registered office, which may be, but need not be, the same as its principal office; and

(2) a registered agent, which agent may be an individual resident in this state whose business office is identical with such registered office or a domestic or foreign corporation, whether for profit or not for profit, authorized to transact business or to conduct its affairs in this state which has a principal or business office identical with such registered office.

Change of Registered Office or Agent; Resignation of Agent

Sec. 3.02. (a) A corporation may change its registered office or change its registered agent, or both, upon filing in the office of the secretary of state a statement setting forth:

(1) the name of the corporation;

(2) the post-office address of its then registered office;

(3) if the post-office address of its registered office is to be changed, the post-office address to which the registered office is to be changed;

(4) the name of its then registered agent;

(5) if its registered agent is to be changed, the name of its successor registered agent;

(6) a statement that the post-office address of its registered office and the post-office address of the business office of its registered agent, as changed, will be identical; and

(7) a statement that such change was authorized by the board of directors or by an officer of the corporation so authorized by the board of directors.

(b) Such statement shall be executed by the corporation by its president or vice-president and verified by him. The original and a copy of such statement shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to the provisions of this Act, he shall, when all fees have been paid as in this Act prescribed:

(1) endorse on the original and the copy of word "filed" and the month, day, and year of the filing thereof;

(2) file the original in his office; and

(3) return the copy to the corporation or its representative.

(c) Upon such filing, the change of address of the registered office or the appointment of a new registered agent, or both, as the case may be, shall become effective.

(d) Any registered agent of a corporation may resign by giving written notice:

(1) to the corporation at its last known address; and

(2) in triplicate (the original and two copies of the notice) to the secretary of state within 10 days after mailing or delivery of said notice to the corporation.

Such notice shall include the last known address of the corporation and shall include a statement that written notice of resignation has been given to the corporation and the date thereof. Upon compliance with the requirements as to written notice, the appointment of such agent shall terminate upon the expiration of 30 days after receipt of such notice by the secretary of state.

(e) If the secretary of state finds that such written notice conforms to the provisions of this Act, he shall, when all fees have been paid as in this Act prescribed:

(1) endorse on the original and both copies the word "filed" and the month, day, and year of the filing thereof;

(2) file the original in his office;

(3) return one copy to such resigning registered agent; and

(4) deliver one copy to the corporation at the last known address of the corporation as shown in such written notice.

Officers as Agents; Service Upon Secretary of State

Sec. 3.03. (a) The president and all vice-presidents of any corporation and the registered agent of such corporation shall be agents of such corporation upon whom may be served any process, notice, or demand required or permitted by law to be served upon the corporation.

(b) Whenever a corporation shall fail to appoint or maintain a registered agent in this state or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the secretary of state shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the secretary of state of any process, notice, or demand shall be made by delivering to and leaving with him, with the assistant secretary of state, or with any clerk having charge of the corporation department of his office duplicate copies of such process, notice, or demand. In the event any such process, notice, or demand is served on the secretary of state, he shall immediately cause one of the copies thereof to be forwarded by registered mail, addressed to the corporation at its registered office. Any service so had on the secretary of state shall be returnable in not less than 30 days.

(c) The secretary of state shall keep a record of all processes, notices, and demands served upon him under this section and shall record therein the time of such service and his action with reference thereto.

Board of Directors

Sec. 3.04. The affairs of a corporation shall be managed by a board of directors. The board of directors shall consist of any number of natural persons, not less than three, each of whom shall be appointed by the governing body of the sponsoring entity on behalf of which the corporation was created for a term of no more than six years, and each of whom shall be removable by the governing body of such sponsoring entity for cause or at will. The directors constituting the first board of directors shall be named in the articles of incorporation. Directors may be divided into classes, and the terms of office of the several classes need not be uniform. Each director shall hold office for the term for which he is appointed and until his successor shall have been appointed and qualified unless sooner removed. The directors shall serve as such without compensation except that they shall be reimbursed for their actual expenses incurred in the performance of their duties hereunder.

Bylaws

Sec. 3.05. The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend, or repeal the bylaws or to adopt new bylaws shall be vested in the board of directors. The bylaws may contain any provisions for the regulation and management of the affairs of a corporation not inconsistent with law or with the articles of incorporation. The initial bylaws and all amendments thereto, substitutes therefor, and repeals thereof shall be subject to the approval of the governing body of the sponsoring entity on behalf of which the corporation was created.

Committees

Sec. 3.06. (a) If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the directors in office, may designate one or more committees, which, to the extent provided in such resolution, in the articles of incorporation, or in the bylaws, shall have and exercise the authority of the board of directors in the management of the corporation. Each such committee shall consist of two or more persons, all of whom shall be directors. The designation of such committees and the delegation thereto of authority shall not operate to relieve the board of directors or any individual director of any responsibility imposed upon it or him by law.

(b) Other committees not having and exercising the authority of the board of directors in the management of the corporation may be designated and appointed by a resolution adopted by a majority of the directors at a meeting at which a quorum is present or by the president thereunto authorized by a like resolution of the board of directors or by the articles of incorporation or by the bylaws. Membership on such committees may, but need not be, limited to directors.

Meetings of Board; Actions Taken Without Meeting

Sec. 3.07. (a) Regular meetings of the board of directors may be called and may be held at any location within the state with or without notice as prescribed in the bylaws. Special meetings of the board of directors shall be held at any location within the state upon such notice as is prescribed in the bylaws. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. Neither the business to be transacted at nor the purpose of any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting, unless required by the bylaws.

(b) A quorum for the transaction of business by the board of directors shall be whichever is less:

(1) a majority of the number of directors fixed by the bylaws or, in the absence of a bylaw fixing the number of directors, a majority of the number of directors stated in the articles of incorporation; or

(2) any number, not less than three, fixed as a quorum by the articles of incorporation or the bylaws.

(c) The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by the articles of incorporation or the bylaws of the corporation.

(d) Any action required to be taken at a meeting of the board of directors or any action which may be taken at a meeting of the board of directors or any committee may be taken without a meeting if a consent in writing, setting forth the action to be taken, shall be signed by all directors or all of the members of the committee, as the case may be. Such consent shall have the same force and effect as a unanimous vote and may be stated as such in any articles or document filed with the secretary of state under this Act.

Officers

Sec. 3.08. The officers of a corporation shall consist of a president, a vice-president, and a secretary, and such officers may include a treasurer and such other officers and assistant officers as may be deemed necessary, each of whom shall be elected or appointed at such time and in such manner and for such terms not exceeding three years as may be prescribed in the articles of incorporation or the bylaws. In the absence of any such provisions, all officers shall be elected or appointed annually by the board of directors. Any two or more offices may be held by the same person, except the offices of president and secretary. Any officer elected or appointed may be removed by the persons authorized to elect or appoint such officer whenever in their judgment the best interests of the corporation will be served thereby.

Indemnification of Officers

Sec. 3.09. (a) A corporation shall have the power to indemnify any director or officer or former director or officer of the corporation for expenses and costs, including attorney's fees, actually and necessarily incurred by him in connection with any claim asserted against him, by action in court or otherwise, by reason of his being or having been such director or officer, except in relation to matters as to which he shall have been guilty of negligence or misconduct in respect of the matter in which indemnity is sought.

(b) If the corporation has not fully indemnified him, the court in the proceeding in which any claim against such director or officer has been asserted or any court having the requisite jurisdiction of an

action instituted by such director or officer on his claim for indemnity may assess indemnity against the corporation or its receiver or trustee for the amount paid by such director or officer in satisfaction of any judgment or in compromise of any such claim, exclusive in either case of any amount paid to the corporation, and any expenses and costs, including attorney's fees, actually and necessarily incurred by him in connection therewith to the extent that the court shall deem reasonable and equitable; provided, nevertheless, that indemnity may be assessed under this section only if the court finds that the person indemnified was not guilty of negligence or misconduct in respect of the matter in which indemnity is sought.

Rights and Powers of Corporation

Sec. 4.01. Every corporation established under the provisions of this Act shall have all the rights and powers necessary or convenient to accomplish the purposes of such corporation as set forth herein, including without limitation the powers:

(1) to provide or cause to be provided by a user by acquisition (whether by purchase, devise, gift, lease, or any one or more of such methods), construction, or improvement one or more health facilities located within this state and within or partially within the limits of the sponsoring entity on behalf of which the corporation was created or, with the consent of every other sponsoring entity within which such health facility is or is to be located, outside the limits of the sponsoring entity on behalf of which such corporation was created;

(2) to lease as lessor all or any part of any health facility for such rentals and upon such terms and conditions as the corporation may deem advisable and as are not in conflict with the provisions of this Act;

(3) to sell for installment payments or otherwise, to option or contract for sale, and to convey all or any part of any health facility for such price and upon such terms and conditions as the corporation may deem advisable and as are not in conflict with the provisions of this Act;

(4) to make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its bonds in accordance with the provisions of this Act, and secure any of its bonds or obligations by mortgage or pledge of all or any of its property, franchises, and income;

(5) to make secured or unsecured loans for the purpose of providing temporary or permanent financing or refinancing of all or part of the cost of any health facility, including the refunding of any outstanding obligations, mortgages, or advances issued, made, or given by any person for the cost of a health facility, and to charge and collect interest on such loans for such loan payments and upon such

terms and conditions as the board of directors of such corporation may deem advisable and as are not in conflict with the provisions of this Act;

(6) to lend money for its corporate 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;

(7) to purchase, receive, lease, or otherwise acquire, own, hold, improve, use, or otherwise deal in and with real or personal property or any interest therein, wherever situated, as the purposes of the corporation shall require or as shall be donated to it;

(8) to sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;

(9) to elect or appoint officers and agents of the corporation for such period of time as the corporation may determine and define their duties;

(10) to sue and be sued, complain and defend, in its corporate name;

(11) to have a corporate seal which may be altered at its pleasure and to use the same by causing it or a facsimile thereof to be impressed on, affixed to, or in any manner reproduced upon instruments of any nature required or authorized to be executed by its proper officers;

(12) to make and alter bylaws not inconsistent with its articles of incorporation or with the laws of this state for the administration and regulation of the affairs of the corporation, provided that such bylaws and all amendments thereto are approved by resolution of the governing body of the sponsoring entity on behalf of which the corporation was created;

(13) to cease its corporate activities and terminate its existence by dissolution as provided herein; and

(14) whether included in the foregoing or not, to have and exercise all powers necessary or appropriate to effect any or all of the purposes for which the corporation is organized.

Provided, however, that no corporation shall be authorized to incur financial obligations under this Act unless payable solely from the proceeds of bonds, revenues derived from the lease or sale of a health facility or realized from a loan made by a corporation to finance or refinance in whole or in part a health facility, revenues derived from operating a health facility, or any other revenues as may be provided by a user of a health facility, any one or more; provided further, however, that such powers shall be subject at all times to the control of the governing body of the sponsoring entity on behalf of which the corporation was created as provided in Section 4.12 hereof; and further provided, however, that nothing in this Act shall be interpreted to bestow upon or authorize a sponsoring entity to delegate to a corporation the power of taxation, the

power of eminent domain, the police power, or any equivalent sovereign power of this state or any sponsoring entity. Nothing in this section grants any authority to officers or directors of a corporation for the exercise of any of the foregoing powers inconsistent with limitations on any of the same which may be expressly set forth in this Act or in the articles of incorporation or bylaws or in any other laws of this state. Authority of officers and directors to act beyond the scope of the purpose or purposes of a corporation is not granted by any provisions of this section.

Conveyance of Land

Sec. 4.02. Any corporation may convey land by deed, with or without the seal of the corporation, signed by the president or vice-president or attorney in fact of the corporation when authorized by appropriate resolution of the board of directors. Such deed, when acknowledged by such officer or attorney in fact to be the act of the corporation or proved in the manner prescribed for other conveyances of land, may be recorded in like manner and with the same effect as other deeds. Any such deed when recorded, if signed by the president or any vice-president of the corporation, shall constitute prima facie evidence that such resolution of the board of directors was duly adopted.

Information Filed With Governing Body of Sponsoring Entity

Sec. 403. At least 14 days prior to the issuance of bonds by a corporation, such corporation shall file with the governing body of the sponsoring entity on behalf of which such corporation was created a full and complete description of any health facility the cost of which is to be paid in whole or in any part from the proceeds of bonds of the corporation proposed to be issued, including an explanation of the projected costs of and the necessity for such proposed health facility and the name of the proposed user of such health facility. All of the information deposited or required to be deposited by this section shall be public information open to public inspection.

Bonds

Sec. 4.04. (a) Each corporation is hereby authorized to issue, sell, and deliver its bonds in accordance with the terms of this Act for the purpose of paying all or any part of the cost of a health facility.

(b) The bonds shall be dated, shall bear interest at such rate or rates (fixed or variable), shall mature at such time or times not exceeding 40 years from their date, and may be made redeemable prior to maturity at such price or prices and upon such terms and conditions as may be determined by the corporation. The bonds, including any interest coupons to be initially attached thereto, shall be in such form and denomination or denominations and pay-

able at such place or places, and may be executed or authenticated in such manner, as the corporation may determine. In cases where any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of and payment for such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery and payment. The bonds may be issued in coupon or in registered form, or both, or may be payable to a specific person, as the corporation may determine, and provision may be made for the registration of any coupon bonds as to principal alone, for the conversion of coupon bonds into fully registered bonds without coupons, and for the re-conversion into coupon bonds of any fully registered bonds without coupons. The duty of conversion or reconversion may be imposed upon a trustee in a trust agreement.

(c) The principal of, redemption premium, if any, and interest on such bonds shall be payable solely from and may be secured by a pledge of all or any part of the proceeds of bonds, revenues derived from the lease or sale of a health facility or realized from a loan made by a corporation to finance or refinance in whole or in part a health facility, revenues derived from operating a health facility, or any other revenues as may be provided by a user of a health facility, any one or more.

(d) The corporation shall sell the bonds at such price or prices as it shall determine, at public or private sale. The net effective interest rate, calculated in accordance with Chapter 3, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 717k-2, Vernon's Texas Civil Statutes), on any bonds may not exceed a rate equal to the maximum annual interest rate established for business loans of \$250,000 or more in this state.

(e) The proceeds of the bonds of each issue shall be used solely for the payment of all or part of the cost of, or for the making of a loan in the amount of all or part of the cost of, the health facility or health facilities for which such bonds have been authorized and, at the option of the corporation, for the deposit to a reserve fund or reserve funds for the bonds. Such proceeds shall be disbursed in such manner and under such restrictions, if any, as may be determined by the corporation. Each corporation shall be paid out of money from the proceeds of the sale and delivery of its bonds issued in accordance with this Act an amount of money equal to all of such corporation's out-of-pocket expenses and costs in connection with the issuance, sale, and delivery of such bonds, including without limitation all financing, legal, financial advisory, printing, and other expenses and costs in issuing such bonds, plus an amount of money equal to the compensation paid to any employees of such corporation for the time such

employees have spent on activities relating to the issuance, sale, and delivery of such bonds.

(f) Prior to the preparation or issuance of definitive bonds, the corporation may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. Such interim receipts or temporary bonds shall be for a maximum term of three years.

Refunding Bonds

Sec. 4.05. Each corporation is hereby authorized to issue, sell, and deliver its bonds for the purpose of refunding any bonds of the corporation then outstanding, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds. The issuance of such bonds, the maturities and other terms thereof, the rights of the holders thereof, and the rights, duties, and obligations of the corporation in respect thereof shall be governed by the provisions of this Act insofar as the same shall be applicable. Within the discretion of the corporation, such refunding bonds may be issued in exchange or substitution for outstanding bonds or may be sold and the proceeds used for the purpose of paying or redeeming outstanding bonds.

Limitation of Obligation on Bonds

Sec. 4.06. Bonds issued in accordance with the provisions of this Act shall not constitute obligations of the State of Texas, any sponsoring entity, or any other political subdivision or agency of this state or a pledge of the faith and credit of any of them. All such bonds shall contain on the face thereof a statement to the effect that (1) neither the State of Texas, nor any political subdivision or agency of the State of Texas, including the sponsoring entity on behalf of which the corporation issuing such bonds was created, shall be obligated to pay the same or the interest thereon and (2) neither the faith and credit nor the taxing power of the State of Texas, said sponsoring entity, or any other political subdivision or agency thereof is pledged to the payment of the principal of, redemption premium, if any, or interest on such bonds.

Exempt Securities

Sec. 4.07. Any bonds issued by a corporation under the provisions of this Act and coupons, if any, representing interest thereon, shall be exempt securities under the Texas Securities Act, as amended (Article 581-1 et seq., Vernon's Texas Civil Statutes). If, however, any bonds issued by a corporation under this Act are secured by an agreement by a user to pay to the corporation amounts sufficient to pay the principal of, redemption premium, if any, and interest on such bonds, notwithstanding that such bonds shall be exempt securities, such an agreement by a user shall be deemed to be a sepa-

rate security issued by such user, and not by such corporation, to the purchasers of such bonds for purposes of the provisions of the Texas Securities Act and shall be exempt from the provisions of such act only (1) if such security is an exempt security pursuant to the terms of such act or (2) if such bonds or the payments to be made under such agreement are guaranteed by any person and such guarantee is an exempt security pursuant to the terms of such act.

Bonds as Investments and Security

Sec. 4.08. Unless the bonds issued under this Act are ineligible for investments in accordance with criteria established in other statutes, rulings, or regulations of the State of Texas or the United States, the bonds issued under this Act shall be and are hereby declared to be legal and authorized investments for any banks; savings banks; trust companies; building and loan associations; insurance companies; fiduciaries; trustees and guardians; and sinking funds for cities, towns, villages, counties, school districts, and other political corporations or subdivisions of the State of Texas. Such bonds shall be eligible to secure the deposit of any and all public funds of the State of Texas and any and all public funds of cities, towns, villages, counties, school districts, and other political corporations or subdivisions of the State of Texas, and they shall be lawful and sufficient security for said deposits at their face value when accompanied by all unma-tured coupons, if any, appertaining thereto.

Perfection of Security Interest

Sec. 4.09. Any security interest granted by a corporation may be perfected in the manner and with the effect specified in Chapter 9, Uniform Commercial Code-Secured Transactions, as amended,¹ any provision in Article 9.104, as amended, of such code to the contrary notwithstanding.

¹ Business and Commerce Code, § 9.101 et seq.

Taxation

Sec. 4.10. Any health facility, including any leasehold estate therein, owned by a corporation which would otherwise be taxable to such corporation under the provisions of the Property Tax Code but for the purposes and nonprofit nature of a corporation shall be assessed to the user of such health facility or, if more than one such user exists, to the users thereof in proportion to the value of the rights of such users to occupy, operate, manage, or employ such health facility, all to the same extent and subject to the same exemptions from taxation, if any, as if such health facility were owned by such user or users. The user of any health facility shall be considered to be the owner of such health facility for the purposes of the application of any sales and use taxes both in the construction of the health facility and any further sale, lease, or rental of the

health facility or any other taxes levied or imposed by this state or any political subdivision of this state. It is hereby declared as a matter of public policy that every corporation organized under the authority of this Act shall be engaged exclusively in the performance of charitable functions and shall be exempt from all taxation by this state and every municipal corporation and political subdivision hereof. All bonds issued by a corporation hereunder, their transfer, the interest thereon, and any profits from the sale or exchange thereof shall at all times be free from taxation by this state or any municipal corporation or political subdivision hereof.

Net Earnings

Sec. 4.11. Any corporation created under the provisions of this Act shall be a nonprofit corporation, and no part of its net earnings remaining after payment of its bonds and its expenses in accomplishing the public purpose provided for in this Act shall inure to the benefit of any person other than the sponsoring entity on behalf of which the corporation was created.

Alteration of Structure, Organization, Programs, or Activities; Access to Books and Records

Sec. 4.12. The sponsoring entity on behalf of which a corporation was created may, in its sole discretion and at any time, alter the structure, organization, programs, or activities of such corporation, subject only to any limitation provided by the constitution and laws of the State of Texas and of the United States relating to the impairment of contracts entered into by the corporation. Representatives of the sponsoring entity on behalf of which a corporation is created shall have access at any time to all books and records of such corporation.

Dissolution of Corporation

Sec. 5.01. (a) Whenever all bonds and obligations of a corporation have been paid and discharged or adequate provision has been made therefor and the governing body of the sponsoring entity on behalf of which the corporation was created shall have by written resolution authorized and directed the dissolution of such corporation, such corporation shall be dissolved as hereinafter provided.

(b) The articles of dissolution shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary or by the presiding officer and the secretary or clerk of the governing body of the sponsoring entity on behalf of which the corporation was created, verified by one of the officers signing such articles, and shall set forth:

- (1) the name of the corporation;
- (2) the name and address of the sponsoring entity, a statement that dissolution of the corporation

has been authorized by the governing body of the sponsoring entity, and the date of the meeting at which such dissolution was so authorized;

(3) a statement that all bonds and obligations of the corporation have been paid and discharged or that adequate provision has been made therefor; and

(4) a statement that there are no suits pending against the corporation in any court or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit.

(c) The original and two copies of such articles of dissolution shall be delivered to the secretary of state. If the secretary of state finds that such articles of dissolution conform to the requirements of this Act and have been authorized by the governing¹ of the sponsoring entity on behalf of which the corporation was created, he shall, when all fees have been paid as in this Act prescribed:

(1) endorse on the original and each copy of such articles the word "filed" and the month, day, and year of the filing thereof;

(2) file the original of such articles in his office; and

(3) issue two certificates of dissolution to each of which he shall affix one copy of such articles.

(d) A certificate of dissolution, together with a copy of the articles of dissolution affixed thereto, shall be delivered by the secretary of state to the representative of the dissolved corporation and to the governing body of the sponsoring entity on behalf of which the corporation was created. Upon the issuance of such certificates of dissolution the existence of the corporation shall cease, except for the purpose of suits, other proceedings, and appropriate corporate action by the directors and officers of such corporation as provided in this Act.

(e) Whenever dissolution occurs, whether instituted by the governing body of the sponsoring entity on behalf of which the corporation was created or by the board of directors of such corporation, the title to all funds and properties then owned by such corporation shall automatically vest in such sponsoring entity without any further conveyance, transfer, or act of any kind whatsoever.

¹So in enrolled bill.

**Rights, Claims, or Liabilities Prior to Dissolution;
Extension of Duration**

Sec. 5.02. The dissolution of a corporation either (1) by the issuance of a certificate of dissolution by the secretary of state or (2) by expiration of its period of duration shall not take away or impair any remedy available to or against such corporation or its directors or officers for any right or claim existing or any liability incurred prior to such dissolution

if action or other proceeding thereon is commenced within three years after the date of such dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The directors and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right, or claim. If such corporation was dissolved by the expiration of its period of duration, such corporation may amend its articles of incorporation at any time during such period of three years so as to extend its period of duration.

Waiver of Notice

Sec. 6.01. Whenever any notice is required to be given to any director under the provisions of this Act or under the provisions of the articles of incorporation or bylaws of a corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

**Articles Requiring Greater Proportion of Directors
for Action**

Sec. 6.02. Whenever, with respect to any action to be taken by the directors of a corporation, the articles of incorporation require the vote or concurrence of a greater proportion of the directors, as the case may be, than required by this Act with respect to such action, the provisions of the articles of incorporation shall control.

Fees of Secretary of State

Sec. 6.03. The secretary of state shall charge and collect for filing articles of incorporation and issuing two certificates of incorporation, filing articles of amendment and issuing two certificates of amendment, filing a statement of change of address of registered office or change of registered agent, or both, filing articles of dissolution, and filing restated articles of incorporation and issuing two restated certificates of incorporation the same fees as are charged by the secretary of state for such respective filings and issuances under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), as the same has previously been or may hereafter be amended.

Power and Authority of Secretary of State

Sec. 6.04. The secretary of state shall have the power and authority reasonably necessary to enable him to administer this Act efficiently and to perform the duties herein imposed upon him.

Notice and Appeal of Disapproval

Sec. 6.05. If the secretary of state shall fail to approve any articles of incorporation, amendment, or dissolution or any other document required by this Act to be approved by the secretary of state

before the same shall be filed in his office, he shall, within 10 days after the delivery thereof to him, give written notice of his disapproval to the person or corporation delivering the same, specifying in such notice the reasons therefor. From such disapproval such person or corporation may appeal to any district court of Travis County by filing with the clerk of such court a petition setting forth a copy of the articles or other document sought to be filed and a copy of the written disapproval thereof by the secretary of state; whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the secretary of state or direct him to take such action as the court may deem proper. Appeals from all final orders and judgments entered by the district court under this section in review of any ruling or decision of the secretary of state may be taken as in other civil actions.

Documents as Prima Facie Evidence

Sec. 6.06. All certificates issued by the secretary of state in accordance with the provisions of this Act and all copies of documents filed in his office in accordance with the provisions of this Act when certified by him shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated and may be officially recorded. A certificate by the secretary of state under the great seal of this state as to the existence or nonexistence of the facts relating to corporations which would not appear from a certified copy of any of the foregoing documents or certificates shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated.

Powers of Legislature

Sec. 6.07. The legislature shall at all times have power to prescribe such regulations, provisions, and limitations as it may deem advisable, which regulations, provisions, and limitations shall be binding upon any and all corporations subject to the provisions of this Act, and the legislature shall have power to amend, repeal, or modify this Act.

Construction With Other Laws

Sec. 7.01. (a) This Act shall be cumulative of all other laws on the subject, but this Act shall be wholly sufficient authority within itself for the creation of any corporation authorized herein and all actions by such corporation authorized hereby without reference to any other general or special laws or specific acts or any restrictions or limitations contained therein; and in any case, to the extent of any conflict or inconsistency between any provisions of this Act and any other provisions of law, this Act shall prevail and control; provided, however, that any sponsoring entity and any corporation shall

have the right to use the provisions of any other laws not in conflict with the provisions hereof to the extent convenient or necessary to carry out any power or authority, express or implied, granted by this Act. No proceedings, notice, or approval shall be required for the organization of a corporation or the issuance of any bonds or any instruments as security therefor, except as herein provided, any other law to the contrary notwithstanding; provided that nothing herein shall be construed to deprive this state and its municipal corporations and political subdivisions of their respective police powers over any properties of such corporation or to impair any police powers thereover of any official or agency of this state and its municipal corporations and political subdivisions as may be otherwise provided by law.

(b) Notwithstanding any provision of this Act, nothing in this Act shall exempt a corporation or any user from compliance with the Texas Health Planning and Development Act, as amended (Article 4418h, Vernon's Texas Civil Statutes).

Construction of Act; Alternative Procedures; Legislative Intent

Sec. 7.02. Nothing in this Act shall be construed so as to violate any provision of the Constitution of the State of Texas or of the United States, and all acts done under this Act shall be in such manner as will conform thereto, whether expressly provided for or not. If any procedure hereunder may be held by any court to be violative of either of such constitutions, a corporation shall have the power by resolution to provide an alternative procedure conforming with such constitutions. It is the intent of the legislature in adopting this Act that a corporation authorized pursuant hereto shall be a public corporation, constituted authority, and instrumentality authorized to issue bonds on behalf of the sponsoring entity on behalf of which such corporation is created, all within the meaning of Section 103 of the Internal Revenue Code of 1954, as amended,¹ and the regulations promulgated and rulings issued thereunder, and this Act shall be construed accordingly.

¹ 26 U.S.C.A. § 103.

Severability

Sec. 7.03. The provisions of this Act are severable. If any word, phrase, clause, paragraph, sentence, section, part, or provision of this Act or the application thereof to any person or circumstance shall be held to be invalid or unconstitutional, the remainder of this Act shall nevertheless be valid; and the legislature hereby declares that this Act would have been enacted without such invalid or

unconstitutional word, phrase, clause, paragraph, sentence, section, part, or provision.

[Acts 1981, 67th Leg., p. 2966, ch. 783, eff. Aug. 31, 1981. Amended by Acts 1983, 68th Leg., p. 2035, ch. 371, § 1, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 5384, ch. 991, eff. Aug. 29, 1983.]

Art. 1528k. Agricultural Development Act

Short Title

Sec. 1. This Act may be cited as the Agricultural Development Act.

Findings; Purpose; Construction

Sec. 2. (a) The legislature finds that:

(1) the high cost and unavailability of loans for agricultural producers wishing to engage in agricultural enterprises result in decreases in crop or livestock business productivity;

(2) the inability of agricultural producers wishing to engage in agricultural enterprises to acquire modern agricultural equipment and facilities makes it difficult for agricultural producers to initiate agricultural enterprises to maintain or increase employment or to enter into cooperative development of industries and enterprises which would increase the value of their products and their access to consumer markets and allow development of new products; and

(3) there exists an inadequate supply of and a pressing need for credit and agricultural business loan financing at interest rates that are consistent with the needs of agricultural producers wishing to engage in agricultural enterprises.

(b) The purpose of this Act is to allow agricultural producers to become directly involved in processing, packaging, and marketing agricultural products by providing a method of financing agricultural enterprises.

(c) This Act shall be liberally construed in conformity with the intention of the legislature.

Definitions

Sec. 3. In this Act:

(1) "Agricultural enterprise" means a business or industry that processes, prepares, refines, converts, packages, grades or labels, ships, or markets agricultural products or by-products or that uses farm or forest products or by-products in the manufacture of other finished or intermediate goods. The term includes businesses and industries related to agriculture, including businesses providing transportation, assembly, packaging, processing, and marketing of agricultural products, grain elevators, shipping heads, livestock pens, warehouses, and wharf and dock facilities.

(2) "Agricultural product" means an agricultural, horticultural, viticultural, or vegetable product, bees and honey, fish and other seafood, planting seed, livestock or livestock product, or poultry or poultry product produced in this state either in its natural state or as processed by the producer.

(3) "Bond" means a bond, note, debenture, or interim certificate. The term includes a bond, grant, revenue anticipation note, or any other evidence of indebtedness of a corporation issued under this Act.

(4) "Board" means the Agricultural Development Board.

(5) "Commissioner" means the commissioner of agriculture.

(6) "Corporation" means a public nonprofit corporation organized under this Act.

(7) "Cost" means all reasonable or necessary costs incidental to the provision, acquisition, construction, reconstruction, rehabilitation, repair, alteration, improvement, and extension of an agricultural enterprise or facility. The term includes:

(A) the cost of acquiring all land, rights-of-way, options to purchase land, easements, leasehold estates in land, and interests of all kinds in land relating to agricultural enterprises or facilities;

(B) the cost of acquiring, constructing, repairing, renovating, remodeling, improving, financing, demolishing, reconstructing, purchasing equipment for, or developing sites for new and rehabilitated buildings and structures to be used as or in conjunction with an agricultural enterprise or facility;

(C) the cost of relocating utilities, public ways, and parks;

(D) the cost of studies and surveys, plans and specifications, architectural, legal, and engineering services, financial advisory, mortgage banking, and administrative services, underwriting services, and accounting, marketing, and other special services relating to an agricultural enterprise or facility;

(E) the costs incurred in connection with the issuance, approval, qualification, or sale of bonds;

(F) the cost of fees for applying to federal, state, and local government agencies for approval of construction or assisted financing;

(G) the cost of machinery, equipment, furnishings, and facilities necessary or incident to an agricultural enterprise;

(H) the cost of financing charges and interest on construction costs incurred before and during construction and for a maximum of two years after completion of construction and on the start-up costs of an agricultural enterprise or facility during construction and for a maximum of two years after completion of construction, including the cost of

initial inventory, raw material, feedstock, commodity, or intermediate goods;

(I) the cost of appraisal fees, expenses, and disbursements;

(J) the cost of an insurance policy or policies, including title, casualty, or liability insurance;

(K) the cost of printing, engraving, and reproduction services;

(L) the cost of fees of a trustee or paying agent;

(M) the cost of an initial bond and interest reserve;

(N) all direct and indirect costs of the corporation incurred in connection with the agricultural enterprise or facility; and

(O) other costs and expenses that the corporation determines are necessary to effectuate the purposes of this Act including sufficient sums to reimburse the corporation for time spent by its agents and employees.

(8) "County" means a political subdivision of the State of Texas created and established under Article IX, Section 1, of the Texas Constitution or a combination of counties.

(9) "Facility" means any real or personal property or an interest in the property, the financing, refinancing, acquiring, providing, constructing, enlarging, remodeling, renovating, improving, furnishing, or equipping of which is determined by the board of directors of a corporation to be necessary or convenient for an agricultural enterprise in this state.

(10) "Lending institution" means a bank, trust company, savings bank, national banking association, savings and loan association, mortgage banker, mortgage company, credit union, life insurance company, or other financial institution or governmental agency that customarily provides service or aids in the financing of agricultural loans or mortgages, or a holding company of any of those institutions.

(11) "Loan insurer" means an agency, department, administration, or instrumentality in the Department of Housing and Urban Development, the Farmers Home Administration of the Department of Agriculture, or the Veterans Administration of the United States of America, a private mortgage insurance company, or another agency that insures or guarantees loans.

Agricultural Development Board

Sec. 4. (a) The Agricultural Development Board is created.

(b) The board consists of three members appointed by the commissioner. One member must have served at least five years as an officer of a financial institution in this state. One member must have at least five years' experience in agricultural produc-

tion. One member must have at least five years' experience in the food or fiber marketing or processing industry.

(c) A member of the board serves a two-year term expiring on January 31 of odd-numbered years.

(d) A member of the board is entitled to receive a per diem for each day that the member engages in the business of the board, plus reimbursement for actual and necessary expenses incurred by the member in performing the member's duties.

Eligibility

Sec. 5. (a) To be eligible for assistance from a corporation organized under this Act, an agricultural enterprise must be a cooperative organized under Chapter 51 or 52, Agriculture Code, or under federal law, an individual agricultural producer, a partnership, a corporation, or a joint venture by any of those organizations, at least 50 percent of the ownership, partnership holdings, assets, or outstanding stock of which is owned or controlled by agricultural producers who provide or plan to provide agricultural products or by-products as raw material, feedstock, commodities, or intermediate goods to be processed, prepared, refined, converted, packaged, graded or labeled, shipped, marketed, or used in the manufacture of other finished or intermediate products.

(b) Notwithstanding any other provision herein, if the agricultural enterprise relates to fish and other seafood products, the Texas Parks and Wildlife Commission shall review such enterprise for the potential impact of the enterprise upon the existing marine and biological ecosystem to be affected by the enterprise and the environmental impact of the enterprise upon the various fisheries and ecological factors in the area to be directly or indirectly affected by the enterprise. Based on this potential impact, the Texas Parks and Wildlife Commission shall issue notice of its approval or disapproval of such enterprise. Affirmative approval by the Texas Parks and Wildlife Commission of the agricultural enterprise shall be a condition precedent to the eligibility of the enterprise for assistance from a corporation organized under this Act.

Application for Creation of Corporation

Sec. 6. (a) When at least three individuals, each of whom is a citizen of the State of Texas and at least 18 years of age, file with the commissioners court of the county in which the individuals reside a written application seeking to create a corporation under this Act, the commissioners court shall consider the application. If the commissioners court by resolution determines that it is wise, expedient, necessary, or advisable that the corporation be formed, it shall approve the application. After the application is approved, the articles of incorporation for the

corporation may be filed as provided by Section 9 of this Act. Only one corporation may be created in each county under this Act. A county may not lend its credit or grant any public money or thing of value in aid of a corporation created under this Act.

(b) Because the legislature wishes to encourage the creation of a corporation to serve more than one county, an application for a corporation to serve more than one county may be submitted under Subsection (a) of this section. If the commissioners court in each county described in the application adopts a resolution under Subsection (a) of this section, the corporation shall serve all of the counties described in the application.

(c) A commissioners court receiving an application for creation of a corporation may deliver notice of the application to any adjoining county or to any county within the state that has agricultural enterprises similar to those in the county. If the commissioners court of a county notified under this subsection desires to be served by the corporation, it may adopt a resolution requesting that the county be served by the corporation.

Contents of Articles of Incorporation

Sec. 7. (a) The articles of incorporation of a corporation must include:

- (1) the name of the corporation;
- (2) a statement that the corporation is a public nonprofit corporation;
- (3) the period of duration, which may be perpetual;
- (4) a statement that the corporation is organized solely to carry out the purposes of this Act and the name or names of the county or counties to be served by the corporation;
- (5) a statement that the corporation is to have no members;
- (6) a provision, not inconsistent with law, for the regulation of the internal affairs of the corporation;
- (7) the street address of the corporation's initial registered office, which must be in one of the counties being served by the corporation, and the name of the initial registered agent at the street address;
- (8) the number of directors constituting the initial board of directors, the names and addresses of the persons who are to serve as the initial directors, a recital that each of them resides in a county served by the corporation, and the length of the term each director is to serve;
- (9) the name and street address of each incorporator and a recital that each of them resides in a county approving creation of the corporation; and
- (10) a recital that a resolution approving the form of the articles of incorporation has been duly adopted by the commissioners court of each county

served by the corporation and the date of the adoption of each resolution.

(b) The articles of incorporation need not state any of the corporate powers granted to the corporation by this Act. The articles of incorporation may prohibit the exercise by the corporation of a power granted to the corporation by this Act.

(c) If a provision in the articles of incorporation is inconsistent with a bylaw, the provision in the articles of incorporation controls.

Incorporators and Initial Board of Directors

Sec. 8. (a) Three or more residents of a county who are at least 18 years of age may act as incorporators of a corporation under this Act by signing, verifying, and delivering in duplicate to the secretary of state articles of incorporation for the corporation. An incorporator may be a member of the commissioners court or an officer or employee of the county.

(b) If the corporation serves more than one county, the initial board of directors must consist of at least one resident from each county served by the corporation.

Filing Articles of Incorporation; Effect of Certificate of Incorporation

Sec. 9. (a) The incorporators of a corporation under this Act shall deliver duplicate originals of the articles of incorporation and a \$25 fee to the secretary of state. If the secretary of state finds that the articles of incorporation conform to this Act, he shall:

- (1) endorse on each duplicate original the word "Filed" and the month, day, and year of the filing;
- (2) file one of the duplicate originals in his office; and
- (3) issue a certificate of incorporation and affix it to the other duplicate original.

(b) The secretary of state shall deliver the certificate of incorporation affixed to the articles of incorporation to the incorporators or their representative.

(c) The corporate existence begins on issuance of the certificate of incorporation. The certificate of incorporation is conclusive evidence that all conditions precedent required to be performed by the county or counties and the incorporators have been performed and that the corporation has been duly incorporated under this Act. The corporation constitutes a public instrumentality and nonprofit corporation under the name set out in the articles of incorporation. The corporation does not constitute a county, city, or other political corporation or subdivision of the state, but the corporation is authorized to issue bonds and to carry out the public purposes for which it is incorporated on behalf and for

the benefit of the general public, the county, and the state.

Amendment of Articles of Incorporation; Articles of Amendment

Sec. 10. (a) The articles of incorporation may at any time be amended to make changes and add any provision that might have been included in the original articles of incorporation. An amendment may be made in the manner provided by Subsection (b), (c), or (d) of this section.

(b) The board of directors of the corporation may file with the commissioners court of each county served by the corporation a written application seeking permission to amend the articles of incorporation. The application must specify the amendment proposed to be made. The commissioners court shall consider the application, and if the court by resolution determines that it is wise, expedient, necessary, or advisable that the proposed amendment be made, the court may authorize the amendment to be made and approve the form of the proposed amendment. The board of directors of the corporation may then amend the articles of incorporation by adopting the amendment at a meeting of the board of directors and delivering the articles of amendment to the secretary of state.

(c) The commissioners court of a county served by the corporation or each of the commissioners courts of all counties served by the corporation, may at its sole discretion alter or change the structure, organization, programs, or activities of the corporation, including the power to terminate the corporation, subject to any limitation on the impairment of contracts entered into by the corporation. The commissioners courts may make the change by adopting an amendment to the articles of incorporation of the corporation and delivering the articles of amendment to the secretary of state.

(d) The commissioners court of a county served by the corporation may, subject to any limitation on the impairment of contracts entered into by the corporation, adopt an amendment to the articles of incorporation of the corporation for the sole purpose of removing the county from being served by the corporation and deliver the articles of amendment to the secretary of state.

(e) The articles of amendment must be executed in duplicate by the president or vice-president and by the secretary or an assistant secretary of the corporation or by the county judge and the county clerk as applicable. The articles of amendment must be verified by one of the officers signing the articles and shall include:

(1) the name of the corporation;

(2) if the amendment alters any provision of the original or amended articles of incorporation, an identification by reference or description of the al-

tered provision and a statement of its text as it is amended;

(3) if the amendment is an addition to the original or amended articles of incorporation, a statement of that fact and the full text of each provision added; and

(4) the date of the meeting of the board of directors or the commissioners court of the county at which the amendment was adopted and a statement that the amendment received the vote of a majority of the directors or the members of the commissioners court of the county who were in office at the time of the vote.

Filing Amendment of Articles

Sec. 11. (a) The board of directors of the corporation or the commissioners court that adopted the articles of amendment shall deliver duplicate originals of the articles of amendment and a \$25 fee to the secretary of state. If the secretary of state finds that the articles of amendment conform to law, he shall:

(1) endorse on each duplicate original the word "Filed" and the month, day, and year of the filing;

(2) file one of the duplicate originals in his office; and

(3) issue a certificate of amendment and affix it to the other duplicate original.

(b) The secretary of state shall deliver the certificate of amendment affixed to the duplicate original of the articles of amendment to the corporation or its representative.

(c) On issuance of the certificate of amendment by the secretary of state, the amendment is effective and the articles of incorporation are amended in accordance with the articles of amendment.

(d) An amendment does not affect an existing cause of action in favor of or against the corporation or a pending suit to which the corporation is a party. In the event the corporate name is changed by amendment, a suit brought by or against the corporation under its former name is not abated.

Board of Directors

Sec. 12. The corporation must have a board of directors in which all powers of the corporation are vested. The board of directors may consist of any number of directors, not less than three, each of whom must be a resident of a county served by the corporation. A director may be a member of the commissioners court or an officer or employee of a county. After the term of office of the initial board of directors has expired, the commissioners court shall appoint the directors in the manner and for the terms provided by the articles of incorporation or the bylaws. Directors may be divided into classes and the terms of office of the several classes need

not be uniform. Each director shall hold office for the term for which he is appointed or until his successor is appointed and has qualified. A director may be removed from office under any procedure provided by the articles of incorporation or bylaws. A vacancy occurring on the board of directors shall be filled by appointment by the commissioners court in the manner provided by the articles of incorporation or the bylaws. A majority of the directors constitutes a quorum. When a quorum is present, action may be taken by a majority vote of the directors present. Meetings of the board of directors, regular or special, may be held in or out of the state. Regular meetings may be held with or without notice as prescribed by the bylaws. Special meetings may be held only with notice prescribed by the bylaws. The officers of the corporation shall consist of a president, one or more vice-presidents, a secretary, a treasurer, and other officers and assistant officers that the board of directors determines are necessary. Each officer shall be selected at the time, in the manner, and for the term prescribed by the articles of incorporation or the bylaws.

Organizational Meeting

Sec. 13. After the issuance of the certificate of incorporation, an organizational meeting of the board of directors named in the articles of incorporation shall be held at the call of a majority of the incorporators for the purpose of adopting bylaws, selecting officers, and for other purposes as may come before the meeting. The incorporators calling the meeting shall before the third day before the meeting deliver by mail notice of the meeting to each director named in the articles of incorporation. The notice must state the time and place of the meeting.

Registered Office and Registered Agent

Sec. 14. The corporation shall maintain a registered office and registered agent in accordance with Article 2.05, Texas Non-Profit Corporation Act, as amended (Article 1396-2.05, Vernon's Texas Civil Statutes). The corporation may change its registered office and registered agent in accordance with Article 2.06, Texas Non-Profit Corporation Act. Process may be served on the corporation in accordance with Article 2.07, Texas Non-Profit Corporation Act.

Powers of Corporation

Sec. 15. A corporation incorporated under this Act has all of the rights, powers, privileges, authority, and functions given by the general laws of this state to nonprofit corporations incorporated under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes). To the extent that the general laws conflict or are inconsistent with this Act, this Act prevails. In addition,

WTSC Corporations-7

a corporation incorporated under this Act has the power to:

(1) have perpetual succession by its corporate name, unless a limited period of duration is stated in its articles of incorporation;

(2) sue and be sued, complain, and defend in its corporate name;

(3) have a corporate seal which may be altered at pleasure and use the seal by impressing or affixing it or a facsimile on or to an instrument required to be executed by the corporate officers;

(4) purchase, receive, lease, acquire, own, hold, improve, use, and deal in or with real or personal property or any interest in property, wherever situated;

(5) sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;

(6) purchase, receive, subscribe for, acquire, own, hold, vote, use, employ, mortgage, lend, pledge, sell, dispose of, and otherwise use or deal in or with shares or other interests in or obligations of corporations, whether for profit or not for profit, associations, partnerships, individuals, or obligations of the United States or of another government, state, political subdivision, territory, government district, or instrumentality of a government;

(7) make contracts and incur liabilities, borrow money at rates of interest as the corporation may determine, issue 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;

(8) lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds loaned or invested;

(9) elect or appoint officers and agents of the corporation for a period of time as the corporation may determine, define their duties, and fix their compensation;

(10) make, alter, amend, and repeal bylaws, not inconsistent with its articles of incorporation or with this Act, for the administration and regulation of the affairs of the corporation;

(11) make donations for the public welfare or for charitable, scientific, or educational purposes;

(12) plan, conduct research, study, develop, and promote the establishment of agricultural enterprises or facilities;

(13) acquire and contract and enter into advance commitments to acquire loans for agricultural enterprises owned by lending institutions at a purchase price and on other terms and conditions as shall be determined by the corporation or its agent;

(14) make and contract and enter into advance commitments to make loans for agricultural enterprises that were originated and serviced by lending institutions;

(15) make and execute contracts with lending institutions for the origination, administration, and servicing of loans for agricultural enterprises and pay the reasonable value of services rendered under those contracts;

(16) make loans to lending institutions that are fully secured in the same manner as deposits of public funds of the county to the extent not secured by loan insurers under terms and conditions which, in addition to other conditions determined by the corporation, require the lending institutions to use substantially all of the net proceeds of the loans for the making of loans for agricultural enterprises in an aggregate principal amount substantially equal to the amount of the net proceeds;

(17) establish in resolutions relating to the issuance of bonds or in financing documents relating to the issuance of bonds standards and requirements applicable to the making or purchase of loans for agricultural enterprises or the making of loans to lending institutions that the corporation determines are necessary or desirable, including:

(A) the time period during which a lending institution must make commitments and disbursements for a loan for an agricultural enterprise;

(B) the location and other characteristics of a facility to be financed by a loan for an agricultural enterprise;

(C) the terms and conditions of a loan for an agricultural enterprise to be made or acquired;

(D) the amount and type of insurance coverage required on a facility, a loan for an agricultural enterprise, and bonds;

(E) the form of a representation and warranty of a lending institution confirming compliance with the standards and requirements;

(F) restrictions on the interest rate and other terms of a loan for an agricultural enterprise and the return realized from the loan by a lending institution;

(G) the type and amount of collateral security to be provided to assure repayment of a loan from the corporation and repayment of bonds; and

(H) other matters related to the making or purchase of a loan for an agricultural enterprise or the making of a loan to a lending institution as determined necessary and relevant by the corporation or the board;

(18) require from each lending institution from which a loan for an agricultural enterprise is to be purchased or to which a loan is to be made the submission of evidence satisfactory to the corpora-

tion of the ability and intention of the lending institution to make a loan for an agricultural enterprise and the submission, in the time period specified by the corporation for making disbursements for loans for agricultural enterprises, of evidence satisfactory to the corporation of the making of a loan for an agricultural enterprise and of compliance with the standards and requirements established by the corporation;

(19) issue corporate bonds to defray in whole or in part the costs of an agricultural enterprise or facility, whether or not the corporation holds title to the agricultural enterprise or facility, and the costs of purchasing or funding the making of loans for agricultural enterprises and designate appropriate names for the bonds;

(20) rent, lease, sell, or otherwise dispose of a facility or agricultural enterprise in whole or in part or loan sufficient funds to a person to defray in whole or in part the costs of an agricultural enterprise or the costs of purchasing loans for agricultural enterprises, so that the rent or other revenue derived from the facility or loans for agricultural enterprises, together with any insurance proceeds, reserve accounts, and earnings on the revenue, produces revenue and receipts in an amount sufficient to promptly pay at maturity the principal, interest, and redemption premiums, if any, on all bonds issued;

(21) pledge all or any part of the revenue, receipts, or resources of the corporation, including the revenue and receipts received from a facility or a loan for an agricultural enterprise to the punctual payment of bonds and the interest and redemption premiums, if any, on the bonds;

(22) mortgage, pledge, or grant security interests in a facility, loan for an agricultural enterprise, note, loan insurance, or other property in favor of the holder of a bond issued under this Act;

(23) sell and convey for a price and at a time that the board of directors of the corporation may determine a facility or a loan for an agricultural enterprise, including without limitation the sale and conveyance of a facility or loan subject to a mortgage, pledge, or security interest, if any, as provided by the resolution relating to the issuance of the bonds;

(24) issue corporate bonds to refund at any time, including advance refunding, in whole or in part bonds issued by the corporation;

(25) apply for and accept on its own behalf or on behalf of any person advances, loans, grants, contributions, guarantees, rent supplements, mortgage assistance, and any other form of financial assistance from the federal government, the state, a county or city, any other public or quasi-public body, corporation, or foundation, or any other source, public or private, including any person, for the purposes of this Act, and to include in a contract

for financial assistance conditions that it determines are reasonable and appropriate and not inconsistent with the purposes of this Act;

(26) make and execute contracts and other instruments necessary or convenient to the exercise of any of the powers granted by this Act;

(27) indemnify a director, officer, or former director or officer of the corporation for expenses and costs, including attorney's fees, actually and necessarily incurred by the director or officer in connection with any claim asserted against the director or officer for being or having been a director or officer, unless the director or officer is guilty of negligence or misconduct with respect to the matter in which indemnity is sought; and

(28) exercise all powers necessary or appropriate to effectuate the purposes for which the corporation is organized.

Bonds of Corporation

Sec. 16. (a) The board of directors of the corporation may by resolution authorize the exercise of any or all powers granted by this Act and issue bonds under this Act. The bonds shall bear interest at a rate or rates authorized by Chapter 3, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 717k-2, Vernon's Texas Civil Statutes), and may be payable at the times, be in one or more series, bear the date or dates, mature at the time or times, be payable in the medium of payment at the place or places, carry the registration privileges, be subject to the terms of redemption at the premiums, be executed in the manner, contain the terms, covenants, and conditions, and be in the form that the resolution provides. The bonds may be sold at public or private sale in the manner and on the terms that are provided by the resolution. Pending the preparation of definitive bonds, interim receipts or certificates in the form and with the provisions that are provided by the resolution may be issued to the purchaser or purchasers of bonds sold under this Act.

(b) The corporation is authorized to issue, sell, and deliver its bonds for the purpose of refunding any outstanding bonds of the corporation, including the payment of any redemption premium and any interest accrued or to accrue to the date of redemption of the bonds. The issuance of the refunding bonds, the rights of the holders of the bonds, and the rights, duties, and obligations of the corporation with respect to the bonds are governed by this Act as far as applicable. In the discretion of the corporation, refunding bonds may be issued in exchange or substitution for outstanding bonds or may be sold and the proceeds used for the purpose of paying or providing for the redemption of outstanding bonds.

Approval of Bonds

Sec. 17. (a) Before bonds are issued under this Act, the Agricultural Development Board must approve the bonds. If the bonds are to be issued for the purpose of providing facilities, the board must approve the contents of any lease, sale, or loan agreement made in connection with the bonds. If the bonds are to be issued for the purpose of providing money for loans for agricultural enterprises, the board must approve the contents of the documents establishing the fund and programs. The board shall adopt rules setting forth minimum standards for project eligibility, for lease, sale, and loan agreements and loan programs, and for guidelines with respect to the business experience, financial resources, and responsibilities of the lessee, purchaser, or borrower under an agreement or of a lending institution under a loan program. The board may not approve an agreement unless the board finds that the project to be financed or the loan program furthers the purpose of this Act. A corporation may appeal an adverse ruling or decision of the board under this subsection to a district court in Travis County. In an appeal under this subsection, the substantial evidence rule applies. Rules, guidelines, and amendments promulgated by the board are not effective until they have been filed with the secretary of state.

(b) The corporation may submit a transcript of proceedings in connection with the issuance of the bonds to the board and request that the board approve the bonds. On filing a request for the board's approval of the bonds, the corporation shall pay to the board a nonrefundable filing fee of \$1,500. If the board refuses to approve the bond issue solely on the basis of law, the corporation may seek a writ of mandamus from the Supreme Court of Texas.

(c) The commissioner may use all funds acquired under Subsection (b) of this section for the administration of this Act.

(d) The board by rule shall require a corporation issuing bonds under this Act to file fee schedules and bond procedures. Bond counsel and financial advisors participating in an issue must be mutually acceptable to the corporation and the user or lending institution.

(e) Before bonds are delivered to the purchasers, the record relating to the bonds shall be examined by the attorney general and the record and bonds shall be approved by the attorney general. After the bonds are approved by the attorney general, they shall be registered in the office of the comptroller of public accounts.

Covenants in Bonds

Sec. 18. (a) A resolution authorizing the issuance of bonds under this Act may contain appropriate covenants relating to:

(1) the use and disposition of the proceeds of the bonds and the revenues and receipts from a facility or loan for an agricultural enterprise for which the bonds are issued, including the creation and maintenance of reserves;

(2) the issuance of additional bonds relating to a facility or rehabilitation, improvements, renovations, enlargements, or additions to the facility;

(3) the maintenance and repair of a facility;

(4) the insurance to be carried on a facility, a loan for an agricultural enterprise, or bonds and the use and disposition of insurance money;

(5) the appointment of one or more banks or trust companies having the necessary trust powers as trustee or custodian for the benefit of a bondholder, paying agent, or bond registrar;

(6) the investment of funds held by a trustee or custodian;

(7) the maximum interest rate payable on a loan for an agricultural enterprise; and

(8) the terms and conditions on which a holder of a bond or a trustee is entitled to the appointment of a receiver by a court of competent jurisdiction.

(b) A covenant under Subdivision (8) of Subsection (a) of this section may provide that the receiver may enter and take possession of a facility or a loan for an agricultural enterprise and maintain, lease, sell, or otherwise dispose of the facility or loan, prescribe rentals or other payments, and collect, receive, and apply all income and revenue arising from the facility or loan.

(c) A resolution authorizing the issuance of bonds may provide that the principal of and interest on the bonds must be secured by a mortgage, pledge, security interest, insurance agreement, or indenture of trust covering the facility or loan for an agricultural enterprise for which the bonds are issued, including improvements or extensions made after the bond issuance. A mortgage, pledge, security interest, insurance agreement, or indenture of trust may contain the covenants and agreements necessary to safeguard properly the bonds that are provided by the resolution authorizing the bonds and shall be executed in the manner provided by the resolution.

(d) This Act, a resolution authorizing bonds, and a mortgage, pledge, security interest, or indenture of trust constitute a contract with the holder or holders of the bonds and the contract continues in effect until the principal of, the interest on, and the redemption premiums, if any, on the bonds have been fully paid or provision has been made for full payment. The duties of the corporation and its corporate authorities and officers under this Act, a resolution authorizing bonds, and a mortgage, pledge, security interest, or indenture of trust are enforceable by a bondholder by mandamus, foreclo-

sure of the mortgage, pledge, security interest, or indenture of trust or other appropriate suit, action, or proceeding in a court of competent jurisdiction.

(e) A resolution authorizing bonds or a mortgage, pledge, security interest, or indenture of trust under which the bonds are issued may provide that the remedies and rights to enforcement may be vested in a trustee with full power of appointment for the benefit of the bondholders. The trustee is subject to the control of the holders or owners of outstanding bonds as provided in the resolution authorizing bonds or other document under which the bonds are issued.

Signature of Officers on Bonds; Validity of Bonds

Sec. 19. (a) Bonds issued under this Act must bear the manual or facsimile signatures of the officers of the corporation required in the resolution authorizing the bonds. If an officer whose manual or facsimile signature appears on a bond ceases to be an officer before the bonds are delivered, the signature is still valid and sufficient for all purposes the same as if the officer had remained in office until the delivery of the bonds.

(b) The validity of the bonds is not dependent on or affected by the validity or regularity of any proceedings relating to the facility or loan for an agricultural enterprise for which the bonds are issued.

(c) The resolution authorizing the bonds may provide that the bonds shall contain a recital that they are issued under this Act. The recital is conclusive evidence of the validity of the bonds and the regularity of the issuance.

Lien of Bonds

Sec. 20. (a) Bonds issued under this Act may be secured by a pledge of or lien on all or any part of the revenue, receipts, or resources of the corporation, including the revenue and receipts derived from a facility, a loan for an agricultural enterprise, or notes or other obligations of lending institutions or loan insurers for which the bonds are issued. The board of directors may provide in the resolution authorizing the bonds for the issuance of additional bonds to be equally and ratably secured by a lien on the revenue and receipts or may provide that the lien on the revenue and receipts is subordinate. Subordinate lien bonds also may be issued unless prohibited by a bond resolution.

(b) A security interest granted by a corporation may be perfected in the manner specified by Chapter 9, Business & Commerce Code.

Liability for Bonds

Sec. 21. (a) Bonds issued under this Act are limited obligations of the corporation payable solely out of the revenue, receipts, and resources pledged

to their payment. The holder of a bond issued under this Act may not compel a county, the commissioner, or the board to pay the bond or the interest or redemption premium, if any, on the bond.

(b) The bonds do not constitute an indebtedness, obligation, or a loan of credit of a county, city, or other municipal or political corporation or subdivision of the state, the commissioner, the board, or the State of Texas. The bonds shall not be construed to create a moral obligation on the part of a county, city, or other municipal or political corporation or subdivision of the state, the commissioner, the board, or the State of Texas for the payment of the bonds, and those entities are prohibited from making any payments on the bonds.

(c) Each bond shall plainly state on its face that the bond is issued under this Act and that it does not constitute an indebtedness, obligation, or loan of credit of a county, city, or other municipal or political corporation or subdivision of the state, the commissioner, the board, or the State of Texas.

Investment of Funds

Sec. 22. The corporation or a trustee or custodian on behalf of the corporation may invest funds held by it as provided by a resolution of the board of directors.

Exception From Construction and Bidding Requirements for Public Buildings

Sec. 23. The acquisition, construction, or rehabilitation of a facility or a loan for an agricultural enterprise is not subject to a requirement relating to public buildings, structures, grounds, works, or improvements imposed by the laws of this state. A requirement of competitive bidding or restriction imposed in the procedure for award of contracts for the purpose of the lease, sale, or other disposition of property of a county is not applicable to an action taken under this Act.

Exemption From Taxation

Sec. 24. (a) The creation of a corporation under this Act is for the benefit of the people of this state, the improvement of their health and welfare, and the promotion of the economy. Those purposes are public purposes and the corporation, being a public instrumentality and nonprofit corporation, will be performing an essential governmental function on behalf and for the benefit of the general public, the county, and the state. The corporation and the property owned by it, the income from the property, bonds issued by it, and the income from the bonds are exempt from the franchise tax, license and recording fees, and all other taxes imposed by the State of Texas or a political subdivision of this state, as an institution of purely public charity

within the tax exemption of Article VIII, Section 2, of the Texas Constitution.

(b) A facility, including a leasehold estate in the facility, owned by a corporation which would otherwise be taxable to the corporation under Title 1 of the Tax Code shall be assessed to the user of the facility or, if there is more than one user, to the users of the facility in proportion to the value of the rights of the users to occupy, operate, manage, or employ the facility. The user of a facility is considered to be the owner of the facility for the purposes of sales and use taxes for the construction of the facility and the sale, lease, or rental of the facility and other taxes levied or imposed by this state or a political subdivision of this state.

Bonds are Securities

Sec. 25. A bond issued under this Act and a coupon, if any, representing interest on the bond, when delivered is a "security" within the meaning of Chapter 8, Business & Commerce Code, and is an exempt security under The Securities Act, as amended (Article 581-1 et seq., Vernon's Texas Civil Statutes). A contract under this Act is not a security within the meaning of The Securities Act.

Bonds as Legal and Authorized Investments and Security

Sec. 26. A bond issued under this Act is a legal and authorized investment for a bank, savings bank, trust company, insurance company, fiduciary, trustee and guardian, and sinking fund of a city, town, village, county, school district, and other political corporation or subdivision of the State of Texas. The bond may be used to secure the deposit of any and all public funds of the State of Texas and any and all public funds of a city, town, village, county, school district, and other political corporation or subdivision of the State of Texas, and the bond is lawful and sufficient security for the deposits at its face value when accompanied by all unmatured coupons appurtenant to the bond.

Nonliability of County and State

Sec. 27. A county, the commissioner, the board, and the State of Texas may not be held liable in any manner for the bonds of a corporation issued under this Act. None of the corporation's agreements or obligations shall be construed to constitute an agreement, obligation, or indebtedness of a county, the commissioner, the board, or this state.

Nonprofit Corporation; Disposition of Earnings

Sec. 28. A corporation incorporated under this Act is a public nonprofit corporation. Dividends

shall not be paid and the net earnings of the corporation may not be distributed to or enure to the benefit of a director or officer or other person, association, or corporation, except in reasonable amounts for services rendered. In the event the board of directors of the corporation determines that sufficient provision has been made for the full payment of the expenses, bonds, and other obligations of the corporation, then any net earnings of the corporation accruing after the determination shall be paid to the county or counties served by the corporation. This section does not prevent the board of directors from transferring all or any part of its property in accordance with the terms of a contract or agreement entered into by the corporation.

Completion of Corporate Purpose; Dissolution

Sec. 29. When the board of directors of a corporation incorporated under this Act by resolution determines that the purposes for which the corporation was formed have been substantially met and all bonds issued and all obligations incurred by the corporation have been fully paid and performed, the board shall execute and file for record in the office of the secretary of state a certificate of dissolution reciting the determination and declaring the corporation to be dissolved. The certificate of dissolution must be executed under the corporate seal of the corporation. On the filing of the certificate of dissolution, the corporation is dissolved, the title to all funds and property owned by the corporation at the time of the dissolution vests in the county or counties that it served, and possession of the funds and property shall be delivered to the county or counties.

Powers not Restricted; Law Complete in Itself

Sec. 30. This Act shall not be construed as a restriction or limitation upon any powers that the

corporation might otherwise have under any law of this state. This Act shall be construed as cumulative of those powers. This Act shall not be construed to deprive the state or its governmental subdivisions of their respective police powers over property of a corporation or impair any power over the property possessed by an official or agency of the state or its governmental subdivisions.

Powers Additional to Those Granted by Other Laws

Sec. 31. The powers conferred by this Act are in addition and supplementary to, and the limitations by this Act do not affect, the powers conferred by any other general, special, or local law.

[Acts 1983, 68th Leg., p. 2093, ch. 384, eff. Aug. 29, 1983.]

CHAPTER NINETEEN. FOREIGN CORPORATIONS [REPEALED]

Arts. 1529, 1530. Repealed by Acts 1961, 57th Leg., p. 458, ch. 229, § 1, eff. Aug. 28, 1961

Art. 1531. Repealed by Acts 1961, 57th Leg., p. 408, ch. 205, § 2, eff. Aug. 28, 1961

Arts. 1532 to 1538. Repealed by Acts 1961, 57th Leg., p. 458, ch. 229, § 1, eff. Aug. 28, 1961

CHAPTER NINETEEN A. NON-PAR CORPORATIONS [REPEALED]

Arts. 1538a to 1538n. Repealed by Acts 1930, 41st Leg., 5th C.S., p. 220, ch. 68, § 1. Acts 1961, 57th Leg., p. 458, ch. 229, § 1, eff. Aug. 28, 1961

TEXAS BUSINESS CORPORATION ACT

PART ONE

- Art.
1.01. Short Title, Captions, Parts, Articles, Sections, Subsections, and Paragraphs.
1.02. Definitions.

PART TWO

- 2.01. Purposes.
2.02. General Powers.
2.02-1. Power to Indemnify and to Purchase Indemnity Insurance; Duty to Indemnify.
2.03. Right of Corporation to Acquire and Dispose of Its Own Shares.
2.04. Defense of Ultra Vires.
2.05. Corporate Name; Use of Assumed Names.
2.06. Reserved Name.
2.07. Registered Name.
2.08. Renewal of Registered Name.
2.09. Registered Office and Registered Agent.
2.10. Change of Registered Office or Registered Agent.
2.10-1. Change of Address of Registered Agent.
2.11. Service of Process on Corporation.
2.12. Authorized Shares.
2.13. Issuance of Shares of Preferred or Special Classes in Series.
2.14. Subscription for Shares.
2.14-1. Stock Rights, Options, and Convertible Indebtedness.
2.15. Consideration for Shares.
2.16. Payment for Shares.
2.17. Determination of Amount of Stated Capital.
2.18. Expenses of Organization, Reorganization, and Financing.
2.19. Certificates Representing Shares.
2.20. Issuance of Fractional Shares or Scrip.
2.21. Liability of Subscribers and Shareholders.
2.22. Transfer of Shares and Other Securities and Restrictions on Transfer.
2.22-1. Shareholders' Preemptive Rights.
2.23. Bylaws.
2.24. Meetings of Shareholders.
2.25. Notice of Shareholders' Meetings.
2.26. Closing of Transfer Books and Fixing Record Date.
2.27. Voting List.
2.28. Quorum of Shareholders.
2.29. Voting of Shares.
2.30. Voting Trusts and Voting Agreements.
2.30-1 to 2.30-5. Repealed.
2.31. Board of Directors.
2.32. Number and Election of Directors.
2.33. Classification of Directors.
2.34. Vacancies.
2.35. Quorum of Directors.
2.36. Executive and Other Committees.
2.37. Place and Notice of Directors' Meetings.
2.38. Dividends.
2.39. Dividends of Consuming Assets Corporation.
2.40. Distributions in Partial Liquidation.
2.41. Liability of Directors and Shareholders in Certain Cases.

- Art.
2.42. Officers.
2.43. Removal of Officers.
2.44. Books and Records.

PART THREE

- 3.01. Incorporators.
3.02. Articles of Incorporation.
3.03. Filing of Articles of Incorporation.
3.04. Effect of Issuance of Certificate of Incorporation.
3.05. Requirement Before Commencing Business.
3.06. Organization Meeting of Directors.

PART FOUR

- 4.01. Right to Amend Articles of Incorporation.
4.02. Procedure to Amend Articles of Incorporation.
4.03. Class Voting on Amendments.
4.04. Articles of Amendment.
4.05. Filing of Articles of Amendment.
4.06. Effect of Certificate of Amendment.
4.07. Restated Articles of Incorporation.
4.08. Procedure for Redemption.
4.09. Restrictions on Redemption or Purchase of Redeemable Shares.
4.10. Reduction of Stated Capital by Redemption or Purchase of Redeemable Shares.
4.11. Cancellation of Treasury Shares.
4.12. Reduction of Stated Capital Without Amendment of Articles and Without Cancellation of Shares.
4.13. Special Provisions Relating to Surplus and Reserves.
4.14. Amendment of Articles of Incorporation in Reorganization Proceedings.

PART FIVE

- 5.01. Procedure for Merger of Domestic Corporations.
5.02. Procedure for Consolidation of Domestic Corporations.
5.03. Approval by Shareholders of Merger or Consolidation of Domestic Corporations.
5.04. Articles of Merger or Consolidation of Domestic Corporations.
5.05. Effective Date of Merger or Consolidation of Domestic Corporations.
5.06. Effect of Merger or Consolidation of Domestic Corporations.
5.07. Merger or Consolidation of Domestic and Foreign Corporations.
5.08. Conveyance by Corporation.
5.09. Disposition of Assets Authorized by Board of Directors.
5.10. Disposition of Assets Requiring Special Authorization of Shareholders.
5.11. Rights of Dissenting Shareholders in the Event of Certain Corporate Actions.
5.12. Procedure for Dissent by Shareholders as to Said Corporate Actions.
5.13. Provisions Affecting Remedies of Dissenting Shareholders.
5.14. Derivative Suits.
5.15. Antitrust Laws; Dissenting Stockholders; Savings Clause.

- Art.
5.16. Merger of Subsidiary or Subsidiaries into Parent Corporation.

PART SIX

- 6.01. Voluntary Dissolution by Incorporators or Directors.
6.02. Voluntary Dissolution by Consent of Shareholders.
6.03. Voluntary Dissolution by Act of Corporation.
6.04. Procedure Before Filing Articles of Dissolution.
6.05. Revocation of Voluntary Dissolution Proceedings.
6.06. Articles of Dissolution.
6.07. Filing Articles of Dissolution.
6.08 to 6.12. Omitted.

PART SEVEN

- 7.01. Involuntary Dissolution.
7.02. Notification to Attorney General, Notice to Corporation and Opportunity of Corporation to Cure Default.
7.03. Venue and Process.
7.04. Appointment of Receiver for Specific Corporate Assets.
7.05. Appointment of Receiver to Rehabilitate Corporation.
7.06. Jurisdiction of Court to Liquidate Assets and Business of Corporation and Receiverships Therefor.
7.07. Qualifications, Powers, and Duties of Receivers; Other Provisions Relating to Receiverships.
7.08. Shareholders Not Necessary Parties Defendant to Receivership or Liquidation Proceedings.
7.09. Decree of Involuntary Dissolution.
7.10. Filing of Decree of Dissolution.
7.11. Deposit with State Treasurer of Amount Due Certain Shareholders and Creditors.
7.12. Survival of Remedy After Dissolution.

PART EIGHT

- 8.01. Admission of Foreign Corporation.
8.02. Powers of Foreign Corporation.
8.03. Corporate Name of Foreign Corporation.
8.04. Change of Name by Foreign Corporation.
8.05. Application for Certificate of Authority.
8.06. Filing of Application for Certificate of Authority.
8.07. Effect of Certificate of Authority.
8.08. Registered Office and Registered Agent of Foreign Corporation.
8.09. Change of Registered Office or Registered Agent of Foreign Corporation.
8.10. Service of Process on Foreign Corporation.
8.11, 8.12. Repealed.
8.13. Amended Certificate of Authority.
8.14. Withdrawal or Termination of Foreign Corporation.
8.15. Filing of Application for Withdrawal.
8.16. Revocation of Certificate of Authority.
8.17. Filing of Decree of Revocation.
8.18. Transacting Business Without Certificate of Authority.

PART NINE

- 9.01. Interrogatories by Secretary of State.
9.02. Information Disclosed by Interrogatories.
9.03. Powers of Secretary of State.
9.04. Appeals From Secretary of State.
9.05. Certificates and Certified Copies to be Received in Evidence.

- Art.
9.06. Forms to be Promulgated by Secretary of State.
9.07. Time for Filing Documents in the Office of the Secretary of State.
9.08. Greater or Lesser Voting Requirements for Certain Corporate Actions.
9.09. Waiver of Notice.
9.10. Actions Without a Meeting: Telephone Meetings.
9.11. Application to Foreign and Interstate Commerce.
9.12. Reservation of Power.
9.13. Effect of Invalidity of Part of This Act.
9.14. To What Corporations This Act Applies; Procedure for Adoption of Act by Existing Corporations.
9.15. Extent to Which Existing Laws Shall Remain Applicable to Corporations.
9.16. Repeal of Existing Laws; Extent and Effect Thereof.

PART TEN

- 10.01. Filing and Filing Fees.

PART ELEVEN

- 11.01. Emergency Clause.

PART TWELVE

- 12.01. Short Title.
12.02. Definitions.
12.03. Applicability.
12.11. Articles of Incorporation.
12.12. Formation of a Close Corporation.
12.13. Adoption of Close Corporation Status.
12.14. Existing Close Corporation.
12.21. Termination of Close Corporation Status.
12.22. Statement of Termination; Filing; Notice.
12.23. Effect of Termination of Close Corporation Status.
12.31. Governance of Close Corporation Affairs.
12.32. Shareholders' Agreement—In General.
12.33. Shareholders' Agreements—Procedures Required.
12.34. Statement of Operations as a Close Corporation.
12.35. Validity and Enforceability of Shareholders' Agreement.
12.36. Binding Effect of Shareholders' Agreement.
12.37. Responsibility of Shareholders for Managerial Acts.
12.38. Other Agreements Among Shareholders Permitted.
12.39. Close Corporation Share Certificates.
12.51. Judicial Proceedings Relating to a Close Corporation.
12.52. Judicial Proceedings to Enforce Close Corporation Provision.
12.53. Judicial Proceeding to Appoint Provisional Director for Close Corporation.
12.54. Judicial Proceeding to Appoint Custodian for Close Corporation.

PART ONE

- Art. 1.01. Short Title, Captions, Parts, Articles, Sections, Subsections, and Paragraphs

A. This Act shall be known and may be cited as the "Texas Business Corporation Act."

B. The Division of this Act into Parts, Articles, Sections, Subsections and Paragraphs and the use

of captions in connection therewith are solely for convenience and shall have no legal effect in construing the provisions of this Act.

C. This Act has been organized and subdivided in the following manner:

(1) The Act is divided into Parts, containing groups of related Articles. Parts are numbered consecutively with cardinal numbers.

(2) The Act is also divided into Articles, numbered consecutively with Arabic numerals.

(3) Articles are divided into Sections. The Sections within each Article are numbered consecutively with capital letters.

(4) Sections are divided into subsections. The subsections within each Section are numbered consecutively with Arabic numerals enclosed in parentheses.

(5) Subsections are divided into paragraphs. The paragraphs within each subsection are numbered consecutively with lower case letters enclosed in parentheses.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

Art. 1.02. Definitions

A. As used in this Act, unless the context otherwise requires, the term:

(1) "Corporation" or "domestic corporation" means a corporation for profit subject to the provisions of this Act, except a foreign corporation.

(2) "Foreign corporation" means a corporation for profit organized under laws other than the laws of this State.

(3) "Articles of incorporation" means the original or restated Articles of incorporation and all amendments thereto.

(4) "Shares" means the units into which the proprietary interests in a corporation are divided, whether certificated or uncertificated shares.

(5) "Subscription" means a memorandum in writing, executed before or after incorporation, wherein an offer is made to purchase and pay for a specified number of theretofore unissued shares of a corporation.

(6) "Subscriber" means the offeror in a subscription.

(7) "Cancel" means to restore issued shares to the status of authorized but unissued shares.

(8) "Authorized shares" means the shares of all classes which the corporation is authorized to issue.

(9) "Treasury shares" means shares of a corporation which have been issued, have been subsequently acquired by and belong to the corporation, and have not been cancelled or restored to the status of authorized but unissued shares. Treasury shares

shall be deemed to be "issued" shares but not "outstanding" shares.

(10) "Net assets" means the amount by which the total assets of a corporation exceed the total debts of the corporation.

(11) "Stated capital" means, at any particular time, the sum of:

(a) the par value of all shares of the corporation having a par value that have been issued,

(b) the consideration fixed by the corporation in the manner provided by law for all shares of the corporation without par value that have been issued, except such part of the consideration actually received therefor as may have been allocated to capital surplus in a manner permitted by law, and

(c) such amounts not included in paragraphs (a) and (b) of this subsection as have been transferred to stated capital of the corporation, whether upon the issue of shares as a share dividend or otherwise, minus all reductions from such sum as have been effected in a manner permitted by law.

(12) "Surplus" means the excess of the net assets of a corporation over its stated capital.

(13) "Earned surplus" means the portion of the surplus of a corporation equal to the balance of its net profits, income, gains and losses from the date of incorporation, or from the latest date when a deficit was eliminated by an application of its capital surplus or stated capital or otherwise, after deducting subsequent distributions to shareholders and transfers to stated capital and capital surplus to the extent such distributions and transfers are made out of earned surplus. Earned surplus shall include also any portion of surplus allocated to earned surplus in mergers, consolidations or acquisitions of all or substantially all of the outstanding shares or of the property and assets of another corporation, domestic or foreign.

(14) "Reduction surplus" means the surplus, if any, created by or arising out of a reduction of stated capital by any of the methods authorized by this Act.

(15) "Capital surplus" means the entire surplus of a corporation other than its earned surplus and its reduction surplus.

(16) "Insolvency" means inability of a corporation to pay its debts as they become due in the usual course of its business.

(17) "Consuming assets corporation" means a corporation which is engaged in the business of exploiting assets subject to depletion or amortization and which elects to state in its Articles of incorporation that it is a consuming assets corporation and includes as a part of its official corporate name the phrase "a consuming assets corporation," giving such phrase equal prominence with the rest

of the corporate name on its financial statements and certificates representing shares. All its certificates representing shares shall also contain a further sentence: "This corporation is permitted by law to pay dividends out of reserves which may impair its stated capital."

(18) "Verified" means subscribed and sworn to under the sanction of an oath, or such affirmation as is by law equivalent to an oath, made before an officer authorized to administer oaths.

(19) "Conspicuous" or "conspicuously", when prescribed for information appearing on a certificate for shares or other securities, means the location of such information or use of type of sufficient size, color, or character that a reasonable person against whom such information may operate should notice it. For example, a printed or typed statement in capitals, or boldface or underlined type, or in type that is larger than or that contrasts in color with that used for other statements on the same certificate, is "conspicuous."

(20) "Certificated shares" means shares represented by instruments in bearer or registered form.

(21) "Uncertificated shares" means shares not represented by instruments and the transfers of which are registered upon books maintained for that purpose by or on behalf of the issuing corporation.

B. Part Twelve of this Act provides definitions of terms used in the Texas Close Corporation Law.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1967, 60th Leg., p. 1718, ch. 657, § 1, eff. June 17, 1967; Acts 1973, 63rd Leg., p. 1086, ch. 545, § 1, eff. Aug. 27, 1973; Acts 1975, 64th Leg., p. 305, ch. 134, § 1, eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 3113, ch. 818, § 2, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 2564, ch. 442, § 2, eff. Sept. 1, 1983.]

PART TWO

Art. 2.01. Purposes

A. Except as hereinafter in this Article excluded herefrom, corporations for profit may be organized under this Act for any lawful purpose or purposes. Corporations for the purpose of operating non-profit institutions, including but not limited to those devoted to charitable, benevolent, religious, patriotic, civic, cultural, missionary, educational, scientific, social, fraternal, athletic, or aesthetic purposes, may not adopt or be organized under this Act.

B. No corporation may adopt this Act or be organized under this Act or obtain authority to transact business in this State under this Act:

(1) If any one or more of its purposes for the transaction of business in this State is expressly prohibited by any law of this State.

(2) If any one or more of its purposes for the transaction of business in this State is to engage in any activity which cannot lawfully be engaged in without first obtaining a license under the authority of the laws of this State to engage in such activity and such a license cannot lawfully be granted to a corporation.

(3) If among its purposes for the transaction of business in this State, there is included, however worded, a combination of the two businesses listed in either of the following:

(a) The business of raising cattle and owning land therefor, and the business of operating stockyards and of slaughtering, refrigerating, canning, curing or packing meat. Owning and operating feed lots and feeding cattle shall not be considered as engaging in "the business of raising cattle and owning land therefor" within the purview of this paragraph of this subsection.

(b) The business of engaging in the petroleum oil producing business in this State and the business of engaging directly in the oil pipe line business in this State: provided, however, that a corporation engaged in the oil producing business in this State which owns or operates private pipe lines in and about its refineries, fields or stations or which owns stock of corporations engaged in the oil pipe line business shall not be deemed to be engaging directly in the oil pipe line business in this State; and provided that any corporation, or group of corporations acting in partnership or other combination with other corporations, engaged as a common carrier in the pipe line business for transporting oil, oil products, gas, carbon dioxide, salt brine, fuller's earth, sand, clay, liquefied minerals or other mineral solutions, shall have all of the rights and powers conferred by Sections 111.019 through 111.022, Natural Resources Code.

(4) If any one or more of its purposes is to operate any of the following:

(a) Banks, (b) trust companies, (c) building and loan associations or companies, (d) insurance companies of every type and character that operate under the insurance laws of this State, and corporate attorneys in fact for reciprocal or inter-insurance exchanges, (e) railroad companies, (f) cemetery companies, (g) cooperatives or limited cooperative associations, (h) labor unions, (i) abstract and title insurance companies whose purposes are provided for and whose powers are prescribed by Chapter 9 of the Insurance Code of this State.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1973, 63rd Leg., p. 1486, ch. 545, § 2, eff. Aug. 27, 1973; Acts 1977, 65th Leg., p. 2690, ch. 871, art. II, § 3, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 2489, ch. 650, § 1, eff. Aug. 31, 1981.]

Art. 2.02. General Powers

A. Subject to the provisions of Sections B and C of this Article, each corporation shall have power:

(1) To have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation. Notwithstanding the articles of incorporation, the period of duration for any corporation incorporated before September 6, 1955, is perpetual if all fees and franchise taxes have been paid as provided by law.

(2) To sue and be sued, complain and defend, in its corporate name.

(3) To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed on, affixed to, or in any manner reproduced upon, instruments of any nature required to be executed by its proper officers.

(4) 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 corporation shall require.

(5) To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets.

(6) To lend money to, and otherwise assist, its employees, officers, and directors if such a loan or assistance reasonably may be expected to benefit, directly or indirectly, the lending or assisting corporation.

(7) 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, shares or other interests in, or obligations of, other domestic or foreign corporations, associations, partnerships, 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.

(8) When permitted by the other provisions of this Act, to purchase or otherwise acquire its own bonds, debentures, or other evidences of its indebtedness or obligations, and, to purchase or otherwise acquire its own shares, and to redeem or purchase shares made redeemable by the provisions of its articles of incorporation.

(9) To make contracts and incur liabilities, borrow money at such rates of interest as the corporation 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.

(10) To lend money for its corporate 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.

(11) To conduct its business, carry on its operations, and have offices and exercise the powers granted by this Act, within or without this State.

(12) To elect or appoint officers and agents of the corporation for such period of time as the corporation may determine, and define their duties and fix their compensation.

(13) To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this State, for the administration and regulation of the affairs of the corporation.

(14) To make donations for the public welfare or for charitable, scientific, or educational purposes.

(15) To transact any lawful business which the board of directors shall find will be in aid of government policy.

(16) To indemnify directors, officers, employees, and agents of the corporation and to purchase and maintain liability insurance for those persons as, and to the extent, permitted by Article 2.02-1 of this Act.

(17) To pay pensions and establish pension plans, pension trusts, profit sharing plans, stock bonus plans, and other incentive plans for all of, or class, or classes of its officers and employees, or its officers or its employees.

(18) To be an organizer, partner, member, associate, or manager of any partnership, joint venture, or other enterprise, and to the extent permitted in any other jurisdiction to be an incorporator of any other corporation of any type or kind.

(19) To cease its corporate activities and terminate its existence by voluntary dissolution.

(20) Whether included in the foregoing or not, to have and exercise all powers necessary or appropriate to effect any or all of the purposes for which the corporation is organized.

B. Nothing in this Article grants any authority to officers or directors of a corporation for the exercise of any of the foregoing powers, inconsistent with limitations on any of the same which may be expressly set forth in this Act or in the articles of incorporation or in any other laws of this State. Authority of officers and directors to act beyond the scope of the purpose or purposes of a corporation is not granted by any provision of this Article.

C. Nothing contained in this Article shall be deemed to authorize any action in violation of the Anti-Trust Laws of this State or of any of the provisions of Part Four of the Texas Miscellaneous

Corporation Laws Act, as now existing or hereafter amended.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1967, 60th Leg., p. 1718, ch. 657, § 2, eff. June 17, 1967; Acts 1973, 63rd Leg., p. 1486, ch. 545, § 3, eff. Aug. 27, 1973; Acts 1979, 66th Leg., p. 175, ch. 96, § 2, eff. May 2, 1979; Acts 1983, 68th Leg., p. 3140, ch. 540, § 1, eff. Aug. 29, 1983.]

Art. 2.02-1. Power to Indemnify and to Purchase Indemnity Insurance; Duty to Indemnify

A. In this article:

(1) "Corporation" includes any domestic or foreign predecessor entity of the corporation in a merger, consolidation, or other transaction in which the liabilities of the predecessor are transferred to the corporation by operation of law and in any other transaction in which the corporation assumes the liabilities of the predecessor but does not specifically exclude liabilities that are the subject matter of this article.

(2) "Director" means any person who is or was a director of the corporation and any person who, while a director of the corporation, is or was serving at the request of the corporation as a director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise.

(3) "Expenses" include court costs and attorneys' fees.

(4) "Official capacity" means

(a) when used with respect to a director, the office of director in the corporation; and

(b) when used with respect to a person other than a director, the elective or appointive office in the corporation held by the officer or the employment or agency relationship undertaken by the employee or agent in behalf of the corporation but in each case does not include service for any other foreign or domestic corporation or any partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise.

(5) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitral, or investigative, any appeal in such an action, suit, or proceeding, and any inquiry or investigation that could lead to such an action, suit, or proceeding.

B. A corporation may indemnify a person who was, is, or is threatened to be made a named defendant or respondent in a proceeding because the person is or was a director of the corporation only if it is determined in accordance with Section F of this article that the person:

(1) conducted himself in good faith;

(2) reasonably believed;

(a) in the case of conduct in his official capacity as a director of the corporation, that his conduct was in the corporation's best interest; and

(b) in all other cases, that his conduct was at least not opposed to the corporation's best interests; and

(3) in the case of any criminal proceeding, had no reasonable cause to believe his conduct was unlawful.

C. A director may not be indemnified under Section B of this article for obligations resulting from a proceeding:

(1) in which the person is found liable on the basis that personal benefit was improperly received by him, whether or not the benefit resulted from an action taken in the person's official capacity; or

(2) in which the person is found liable to the corporation.

D. The termination of a proceeding by judgment, order, settlement, or conviction, or on a plea of nolo contendere or its equivalent is not of itself determinative that the person did not meet the requirements set forth in Section B of this article.

E. A person may be indemnified under Section B of this article against judgments, penalties (including excise and similar taxes), fines, settlements, and reasonable expenses actually incurred by the person in connection with the proceeding; but if the proceeding was brought by or in behalf of the corporation, the indemnification is limited to reasonable expenses actually incurred by the person in connection with the proceeding.

F. A determination of indemnification under Section B of this article must be made:

(1) by a majority vote of a quorum consisting of directors who at the time of the vote are not named defendants or respondents in the proceeding;

(2) if such a quorum cannot be obtained, by a majority vote of a committee of the board of directors, designated to act in the matter by a majority vote of all directors, consisting solely of two or more directors who at the time of the vote are not named defendants or respondents in the proceeding;

(3) by special legal counsel selected by the board of directors or a committee of the board by vote as set forth in Subsection (1) or (2) of this section, or, if such a quorum cannot be obtained and such a committee cannot be established, by a majority vote of all directors; or

(4) by the shareholders in a vote that excludes the shares held by directors who are named defendants or respondents in the proceeding.

G. Authorization of indemnification and determination as to reasonableness of expenses must be

made in the same manner as the determination that indemnification is permissible, except that if the determination that indemnification is permissible is made by special legal counsel, authorization of indemnification and determination as to reasonableness of expenses must be made in the manner specified by Subsection (3) of Section F of this article for the selection of special legal counsel.

H. A corporation shall indemnify a director against reasonable expenses incurred by him in connection with a proceeding in which he is a party because he is a director if he has been wholly successful, on the merits or otherwise, in the defense of the proceeding.

I. If, in a suit for the indemnification required by Section H of this article, a court of competent jurisdiction determines that the director is entitled to indemnification under that section, the court shall order indemnification and shall award to the director the expenses incurred in securing the indemnification.

J. If a court of competent jurisdiction determines that a director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not he has met the requirements set forth in Section B of this article or has been adjudged liable in the circumstances described by Section C of this article, the court may order the indemnification that the court determines is proper and equitable. The court shall limit indemnification to reasonable expenses if the proceeding is brought by or in behalf of the corporation or if the director is found liable on the basis that personal benefit was improperly received by him, whether or not the benefit resulted from an action taken in the person's official capacity.

K. Reasonable expenses incurred by a director who was, is, or is threatened to be made a named defendant or respondent in a proceeding may be paid or reimbursed by the corporation in advance of the final disposition of the proceeding after:

(1) the corporation receives a written affirmation by the director of his good faith belief that he has met the standard of conduct necessary for indemnification under this article and a written undertaking by or on behalf of the director to repay the amount paid or reimbursed if it is ultimately determined that he has not met those requirements; and

(2) a determination that the facts then known to those making the determination would not preclude indemnification under this article.

L. The written undertaking required by Section K of this article must be an unlimited general obligation of the director but need not be secured. It may be accepted without reference to financial ability to make repayment. Determinations and authorizations of payments under Section K of this article must be made in the manner specified by

Section F of this article for determining that indemnification is permissible.

M. A provision for a corporation to indemnify or to advance expenses to a director who is a named defendant or respondent in a proceeding, whether contained in the articles of incorporation, the bylaws, a resolution of shareholders or directors, an agreement, or otherwise, except in accordance with Section R of this article, is void unless it is consistent with this article as limited by the articles of incorporation, if such a limitation exists.

N. Notwithstanding any other provision of this article, a corporation may pay or reimburse expenses incurred by a director in connection with his appearance as a witness or other participation in a proceeding at a time when he is not a named defendant or respondent in the proceeding.

O. An officer of the corporation shall be indemnified as, and to the same extent, provided by Sections H, I, and J of this article for a director and is entitled to seek indemnification under those sections to the same extent as a director. A corporation may indemnify and advance expenses to an officer, employee, or agent of the corporation to the same extent that it may indemnify and advance expenses to directors under this article.

P. A corporation may indemnify and advance expenses to nominees and designees who are not or were not officers, employees, or agents of the corporation who are or were serving at the request of the corporation as a director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, other enterprise, or employee benefit plan to the same extent that it may indemnify and advance expenses to directors under this article.

Q. A corporation may indemnify and advance expenses to an officer, employee or agent, or person who is identified by Section P of this article as a nominee or designee and who is not a director to such further extent, consistent with law, as may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract or as permitted or required by common law.

R. A corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the corporation or who is or was serving at the request of the corporation as a director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, other enterprise, or employee benefit plan, against any liability asserted against him and incurred by him in such a capacity or arising out of his status as such a person, whether or not the corporation would

have the power to indemnify him against that liability under this article.

S. Any indemnification of or advance of expenses to a director in accordance with this article shall be reported in writing to the shareholders with or before the notice or waiver of notice of the next shareholders' meeting or with or before the next submission to shareholders of a consent to action without a meeting pursuant to Section A, Article 9.10, of this Act and, in any case, within the 12-month period immediately following the date of the indemnification or advance.

T. For purposes of this article, the corporation is deemed to have requested a director to serve an employee benefit plan whenever the performance by him of his duties to the corporation also imposes duties on or otherwise involves services by him to the plan or participants or beneficiaries of the plan. Excise taxes assessed on a director with respect to an employee benefit plan pursuant to applicable law are deemed fines. Action taken or omitted by him with respect to an employee benefit plan in the performance of his duties for a purpose reasonably believed by him to be in the interest of the participants and beneficiaries of the plan is deemed to be for a purpose which is not opposed to the best interests of the corporation.

U. The articles of incorporation of a corporation may restrict the circumstances under which the corporation is required or permitted to indemnify a person under Section H, I, J, O, P, or Q of this article.

[Acts 1983, 68th Leg., p. 3143, ch. 540, § 2, eff. Aug. 29, 1983.]

Art. 2.03. Right of Corporation to Acquire and Dispose of Its Own Shares

A. A corporation shall not purchase directly or indirectly any of its own shares unless such purchase is authorized by this Article and not prohibited by its articles of incorporation.

B. A corporation may purchase its own shares to the extent of the aggregate of any unrestricted surplus available therefor and its stated capital when the purchase is authorized by the directors, acting in good faith to accomplish any of the following purposes:

- (1) To eliminate fractional shares.
- (2) To collect or compromise indebtedness owed by or to the corporation.
- (3) To pay dissenting shareholders entitled to payment for their shares under the provisions of this Act.
- (4) To effect the purchase or redemption of its redeemable shares in accordance with the provisions of this Act.

C. Upon resolution of its board of directors authorizing the purchase and upon compliance with any other requirements of its articles of incorporation, a corporation may purchase its own shares to the extent of unrestricted earned surplus available therefor if accrued cumulative preferential dividends and other current preferential dividends have been fully paid at the time of purchase.

D. If the articles of incorporation so permit, or upon resolution of its board of directors and vote of the holders of at least two-thirds of all shares, entitled to vote thereon, a corporation may purchase, directly or indirectly, its own shares to the extent of the aggregate of unrestricted capital surplus available therefor and unrestricted reduction surplus available therefor.

E. To the extent that earned surplus, capital surplus or reduction surplus is used as the measure of the corporation's right to purchase its own shares, such surplus shall be restricted so long as such shares are held as treasury shares, and upon the disposition or cancellation of any such shares the restriction shall be removed pro tanto as to all of such restricted surplus not eliminated thereby.

F. In no case shall a corporation purchase its own shares when there is reasonable ground for believing that the corporation is insolvent, or will be rendered insolvent by such purchase, or when, after such purchase, the fair value of its total assets will be less than the total amount of its debts. For the purposes of this section, the purchase of shares acquired in consideration of any indebtedness or deferred payment obligation of the corporation is deemed to have been made on the date that indebtedness or obligation is incurred.

G. An open-end investment company, registered as such under the Federal Investment Company Act of 1940, as heretofore or hereafter amended,¹ if its articles of incorporation shall so provide, may purchase, receive, or otherwise acquire, hold, own, pledge, transfer, or otherwise dispose of its own shares, out of stated capital or any unrestricted surplus.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1973, 63rd Leg., p. 1488, ch. 545, §§ 4, 5, eff. Aug. 27, 1973; Acts 1983, 68th Leg., p. 3150, ch. 540, § 3, eff. Aug. 29, 1983.]

¹ 15 U.S.C.A. § 80a-1 et seq.

Art. 2.04. Defense of Ultra Vires

A. Lack of capacity of a corporation shall never be made the basis of any claim or defense at law or in equity.

B. No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that such act, conveyance or transfer was beyond the scope of the purpose or purposes of the corporation as expressed in its articles of incorporation or

by reason of limitations on authority of its officers and directors to exercise any statutory power of the corporation, as such limitations are expressed in the articles of incorporation, but that such act, conveyance or transfer was, or is, beyond the scope of the purpose or purposes of the corporation as expressed in its articles of incorporation or inconsistent with any such expressed limitations of authority, may be asserted:

(1) In a proceeding by a shareholder against the corporation to enjoin the doing of any act or acts or the transfer of real or personal property by or to the corporation. If the unauthorized act or transfer sought to be enjoined is being, or is to be, performed or made pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a part of loss or damage sustained.

(2) In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through shareholders in a representative suit, against the incumbent or former officers or directors of the corporation for exceeding their authority.

(3) In a proceeding by the Attorney General, as provided in this Act, to dissolve the corporation, or in a proceeding by the Attorney General to enjoin the corporation from transacting unauthorized business, or to enforce divestment of real property acquired or held contrary to the laws of this State. [Acts 1955, 54th Leg., p. 239, ch. 64.]

Art. 2.05. Corporate Name; Use of Assumed Names

A. The Corporate name shall conform to the following requirements:

(1) It shall contain the word "corporation," "company," or "incorporated," or shall contain an abbreviation of one of such words, and shall contain such additional words as may be required by law.

(2) It shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation.

(3) It shall not be the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this State, or the name of any foreign corporation authorized to transact busi-

ness in this State, or a name the exclusive right to which is, at the time, reserved in the manner provided in this Act, or the name of a corporation which has in effect a registration of its corporate name as provided in this Act; provided that a name may be similar if written consent is obtained from the existing corporation having the name deemed to be similar or the person, or corporation, for whom the name deemed to be similar is reserved in the office of the Secretary of State.

B. Any domestic or foreign corporation having authority to transact business in this State, may do so under an assumed name, by filing an assumed name certificate in the manner prescribed by law. [Acts 1955, 54th Leg., p. 239, ch. 64.]

Art. 2.06. Reserved Name

A. The exclusive right to the use of a corporate name may be reserved by:

(1) Any person intending to organize a corporation under this Act.

(2) Any domestic corporation intending to change its name.

(3) Any foreign corporation intending to make application for a certificate of authority to transact business in this State.

(4) Any foreign corporation authorized to transact business in this State and intending to change its name.

(5) Any person intending to organize a foreign corporation and intending to have such corporation make application for a certificate of authority to transact business in this State.

B. The reservation shall be made by filing with the Secretary of State an application to reserve a specified corporate name, executed by the applicant or the attorney or agent thereof. If the Secretary of State finds that the name is available for corporate use, he shall reserve the same for the exclusive use of the applicant for a period of one hundred and twenty (120) days.

C. The right to the exclusive use of a specified corporate name so reserved may be transferred to any other person or corporation by filing in the office of the Secretary of State a notice of such transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

Art. 2.07. Registered Name

A. Any foreign corporation not authorized to transact business in this State may register its corporate name under this Act, provided its corporate name is not the same as, or deceptively similar to, the name of any domestic corporation existing

under the laws of this State or the name of any foreign corporation authorized to transact business in this State or any corporate name reserved or registered under this Act.

B. Such registration shall be made by:

(1) Filing with the Secretary of State:

(a) An application for registration executed by the corporation by an officer thereof, setting forth the name of the corporation, the state or territory under the laws of which it is incorporated, the date of its incorporation, a statement that it is carrying on or doing business, and a brief statement of the business in which it is engaged, and

(b) A certificate setting forth that such corporation is in good standing under the laws of the state or territory wherein it is organized, executed by the Secretary of State of such state or territory or by such other official as may have custody of the records pertaining to corporations, and

(2) Paying to the Secretary of State the required registration fee.

C. Such registration shall be effective for a period of one year from the date on which the application for registration is filed, unless voluntarily withdrawn by the filing of a written notice thereof with the Secretary of State.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1967, 60th Leg., p. 1718, ch. 657, § 3, eff. June 17, 1967.]

Art. 2.08. Renewal of Registered Name

A. A corporation which has in effect a registration of its corporate name may renew such registration from year to year by filing annually an application for renewal in the manner prescribed for the filing of an original application. Such renewal application shall be filed during the ninety (90) days preceding the expiration date of the then current registration.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

Art. 2.09. Registered Office and Registered Agent

A. Each corporation shall have and continuously maintain in this State:

(1) A registered office which may be, but need not be, the same as its place of business.

(2) A registered agent, which agent may be either an individual resident in this State whose business office is identical with such registered office, or a domestic corporation, or a foreign corporation authorized to transact business in this State which has a business office identical with such registered office.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

Art. 2.10. Change of Registered Office or Registered Agent

A. A corporation may change its registered office or change its registered agent, or both, upon filing in the office of the Secretary of State a statement setting forth:

(1) The name of the corporation.

(2) The post-office address of its then registered office.

(3) If the post-office address of its registered office is to be changed, the post-office address to which the registered office is to be changed.

(4) The name of its then registered agent.

(5) If its registered agent is to be changed, the name of its successor registered agent.

(6) That the post-office address of its registered office and the post-office address of the business office of its registered agent, as changed, will be identical.

(7) That such change was authorized by its Board of Directors or by an officer of the corporation so authorized by the Board of Directors.

B. The statement required by this article shall be executed by the corporation by its president or a vice president, and verified by him. The original and a copy of the statement shall be delivered to the Secretary of State. If the Secretary of State finds that such statement conforms to the provisions of this Act, he shall, when the appropriate filing fee is paid as prescribed by law:

(1) Endorse on the original and the copy the word, "Filed," and the month, day and year of the filing thereof.

(2) File the original in his office.

(3) Return the copy to the corporation or its representative.

C. Upon such filing, the change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, shall become effective.

D. Any registered agent of a corporation may resign

(1) by giving written notice to the corporation at its last known address

(2) and by giving written notice, in duplicate (the original and one copy of the notice), to the Secretary of State within ten days after mailing or delivery of said notice to the corporation. Such notice shall include the last known address of the corporation and shall include the statement that written notice of resignation has been given to the corporation and the date thereof. Upon compliance with the requirements as to written notice, the appointment of such agent shall terminate upon the expiration of

thirty (30) days after receipt of such notice by the Secretary of State.

If the Secretary of State finds that such written notice conforms to the provisions of this Act, he shall:

(1) Endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof.

(2) File the original in his office.

(3) Return the copy to such resigning registered agent.

(4) Notify the corporation of the resignation of the registered agent.

No fee shall be required to be paid for the filing of a resignation under this section.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1969, 61st Leg., p. 2483, ch. 835, §§ 1, 2, eff. June 18, 1969; Acts 1979, 66th Leg., p. 222, ch. 120, § 23, eff. May 9, 1979; Acts 1981, 67th Leg., p. 838, ch. 297, § 12, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 684, ch. 158, § 1, eff. May 20, 1983.]

Art. 2.10-1. Change of Address of Registered Agent

A. The location of the registered office in Texas for a corporation, domestic or foreign, may be changed from one address to another upon filing in the office of the Secretary of State a statement setting forth:

(1) The name of the corporation represented by such registered agent.

(2) The address at which such registered agent has maintained the registered office for said corporation.

(3) The new address at which such registered agent will thereafter maintain the registered office for said corporation.

(4) A statement that notice of the change has been given to said corporation in writing at least ten (10) days prior to such filing.

B. The statement required by this article shall be signed and verified by the registered agent, or, if said agent is a corporation, by the president or vice-president of such corporate agent. If the registered agent is simultaneously filing statements as to more than one corporation, each such statement may contain facsimile signatures in the execution. The original and one copy of the statement shall be delivered to the Secretary of State. If the Secretary of State finds that such statement conforms to the provisions of this Act, he shall:

(1) Endorse on the original and the copy the word "Filed," and the month, day, and year of the filing thereof.

(2) File the original in his office.

(3) Return the copy to such registered agent.

C. The registered office of the corporation named in such statement shall be changed to the new address of the registered agent upon the filing of such statement by the Secretary of State.

[Acts 1967, 60th Leg., p. 1718, ch. 657, § 4, eff. June 17, 1967. Amended by Acts 1979, 66th Leg., p. 223, ch. 120, § 24, eff. May 9, 1979; Acts 1983, 68th Leg., p. 685, ch. 158, § 2, eff. May 20, 1983.]

Art. 2.11. Service of Process on Corporation

A. The president and all vice presidents of the corporation and the registered agent of the corporation shall be agents of such corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served.

B. Whenever a corporation shall fail to appoint or maintain a registered agent in this State, or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the Secretary of State shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the Secretary of State of any process, notice, or demand shall be made by delivering to and leaving with him, or with the Assistant Secretary of State, or with any clerk having charge of the corporation department of his office, duplicate copies of such process, notice, or demand. In the event any such process, notice, or demand is served on the Secretary of State, he shall immediately cause one of the copies thereof to be forwarded by registered mail, addressed to the corporation at its registered office. Any service so had on the Secretary of State shall be returnable in not less than thirty (30) days.

C. The Secretary of State shall keep a record of all processes, notices and demands served upon him under this Article, and shall record therein the time of such service and his action with reference thereto.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

Art. 2.12. Authorized Shares

A. Each corporation may issue the number of shares stated in its articles of incorporation. Such shares may be divided into one or more classes, any or all of which classes may consist of shares with par value or shares without par value, with such designations, preferences, limitations, and relative rights as shall be stated in the articles of incorporation. The articles of incorporation may limit or deny the voting rights of the shares of any class to the extent that such limitation or denial is not inconsistent with the provisions of this Act.

B. Without being limited to the authority herein contained, a corporation, when so provided in its

articles of incorporation, may issue shares of preferred or special classes:

(1) Subject to the right of the corporation to redeem any shares having a liquidation preference at the price fixed by the articles of incorporation for the redemption thereof.

(2) Entitling the holders thereof to cumulative, noncumulative, or partially cumulative dividends.

(3) Having preference over any other class or classes of shares as to the payment of dividends.

(4) Having preference in the assets of the corporation over any other class or classes of shares upon the voluntary or involuntary liquidation of the corporation.

(5) Convertible into shares of any other class or into shares of any series of the same or any other class, except a class having prior or superior rights and preferences as to dividends or distribution of assets upon liquidation, but shares without par value shall not be converted into shares with par value unless that part of the stated capital of the corporation represented by such shares without par value is, at the time of conversion, at least equal to the aggregate par value of the shares into which shares without par value are to be converted or the amount of any such deficiency is transferred from surplus to stated capital.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1973, 63rd Leg., p. 1488, ch. 545, § 6, eff. Aug. 27, 1973.]

Art. 2.13. Issuance of Shares of Preferred or Special Classes in Series

A. If the articles of incorporation so provide, the shares of any preferred or special class may be divided into and issued in series. If the shares of any such class are to be issued in series, then each series shall be so designated as to distinguish the shares thereof from the shares of all other series and classes. Any or all of the series of any such class and the variations in the relative rights and preferences as between different series may be fixed and determined by the articles of incorporation, but all shares of the same class shall be identical except as to the following relative rights and preferences, as to which there may be variations between different series:

- (1) The rate of dividend.
- (2) The price at and the terms and conditions on which shares may be redeemed.
- (3) The amount payable upon shares in event of involuntary liquidation.
- (4) The amount payable upon shares in event of voluntary liquidation.
- (5) Sinking fund provisions for the redemption or purchase of shares.

(6) The terms and conditions on which shares may be converted, if the shares of any series are issued with the privilege of conversion.

(7) Voting rights.

B. If the articles of incorporation shall expressly vest authority in the board of directors, then, to the extent that the articles of incorporation shall not have established series and fixed and determined the variations in the relative rights and preferences as between series, the board of directors shall have authority to divide any or all of such classes into series and, within the limitations set forth in this Article and in the articles of incorporation, to fix and determine the relative rights and preferences of the shares of any series so established.

C. In order to establish a series, where authority so to do is contained in the articles of incorporation, the board of directors shall adopt a resolution setting forth the designation of the series and fixing and determining the relative rights and preferences thereof, or so much thereof as shall not be fixed and determined by the articles of incorporation.

D. Prior to the issuance of any shares of a series established by resolution adopted by the board of directors, the corporation shall file in the office of the Secretary of State a statement setting forth:

- (1) The name of the corporation.
- (2) A copy of the resolution establishing and designating the series, and fixing and determining the relative rights and preferences thereof.
- (3) The date of adoption of such resolution.
- (4) That such resolution was duly adopted by the board of directors.

E. Such statement shall be executed by the corporation by its president or a vice president and by its secretary or an assistant secretary and verified by one of the officers signing such statement. The original and a copy of the statement shall be delivered to the Secretary of State. If the Secretary of State finds that such statement conforms to law, he shall, when the appropriate filing fee is paid as prescribed by law:

- (1) Endorse on the original and the copy the word "Filed," and the month, day, and year of the filing thereof.
- (2) File the original in his office.
- (3) Return the copy to the corporation or its representative.

F. Upon the filing of such statement by the Secretary of State, the resolution establishing and designating the series and fixing and determining the relative rights and preferences thereof shall

become an amendment of the articles of incorporation.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1973, 63rd Leg., p. 1489, ch. 545, § 7, eff. Aug. 27, 1973; Acts 1979, 66th Leg., p. 223, ch. 120, § 25, eff. May 9, 1979; Acts 1981, 67th Leg., p. 838, ch. 297, § 13, eff. Aug. 31, 1981.]

Art. 2.14. Subscription for Shares

A. Unless otherwise provided therein, a subscription for shares of a corporation to be organized may not be revoked within six (6) months, except with the consent of all other subscribers.

B. In the case of a corporation to be organized, the filing of the articles of incorporation by the Secretary of State shall constitute acceptance by the corporation of all subscriptions which are contained in a list of subscriptions filed with the articles of incorporation. Such list of subscriptions shall contain the name, post office address, number of shares, and amount paid by each subscriber. Failure to include a subscription in the list of subscriptions shall constitute a rejection of the offer.

C. In the case of an existing corporation, acceptance shall be effected by a resolution of acceptance by the board of directors or by a written memorandum of acceptance executed by one authorized by the board of directors and delivered to the subscriber or his assignee.

D. Subscriptions for shares, whether made before or after the organization of a corporation, shall be paid in full at such time, or in such installments and at such times, as shall be determined by the board of directors. Any call made by the board of directors for payment on subscriptions shall be uniform as to all shares of the same class or as to all shares of the same series, as the case may be. In case of default in the payment of any installment or call when such payment is due, the corporation may proceed to collect the amount due in the same manner as any debt due the corporation. The by-laws may prescribe other penalties for failure to pay installments or calls that may become due, but no penalty working a forfeiture of a subscription, or of the amounts paid thereon, shall be declared against any subscriber unless the amount due thereon shall remain unpaid for a period of twenty (20) days after written demand has been made therefor. If mailed, such written demand shall be deemed to be made when deposited in the United States mail in a sealed envelope addressed to the subscriber at his last post office address known to the corporation, with postage thereon prepaid. If the demand remains unsatisfied for a period of twenty (20) days, and if the corporation is solvent, the corporation may declare the subscription to be forfeited. The effect of such declaration of forfeiture shall be to

terminate all the rights and obligations of the subscriber as such.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

Art. 2.14-1. Stock Rights, Options, and Convertible Indebtedness

A. Subject to any limitations in its articles of incorporation, a corporation may create and issue, whether or not in connection with the issuance and sale of any of its shares or other securities, (1) rights or options entitling the holders thereof to purchase from the corporation any of its shares of any class or classes or other securities and (2) indebtedness convertible into any of its share of any class or classes or other securities. Such rights, options or indebtedness shall be evidenced in such manner as the board of directors shall approve and, subject to the provisions of the articles of incorporation, shall set forth (a) in the case of rights or options, the terms upon which, the time or times within which, and the price or prices at which such shares may be purchased from the corporation upon the exercise of any such right or option, or (b) in the case of convertible indebtedness, the terms and conditions upon which, the time or times within which, and the conversion ratio or ratios at which such indebtedness may be converted into such shares. In the absence of fraud in the transaction, the judgment of the board of directors as to the adequacy of the consideration received for such rights, options, or indebtedness shall be conclusive. The price or prices to be received for any shares having a par value, other than treasury shares, to be issued upon the exercise of such rights or options shall not be less than the par value thereof. No privilege of conversion shall be conferred upon, or altered in respect to, any indebtedness that would result in receipt by the corporation of less than the minimum consideration required to be received upon issuance of the shares. The consideration for shares issued upon the exercise of convertible indebtedness shall be that provided in Article 2.15 of this Act.

[Acts 1973, 63rd Leg., p. 1489, ch. 545, § 8, eff. Aug. 27, 1973.]

Art. 2.15. Consideration for Shares

A. Shares having a par value may be issued for such consideration, expressed in dollars, not less than the par value thereof, as shall be fixed from time to time by the board of directors.

B. Shares without par value may be issued for such consideration, expressed in dollars, as may be fixed from time to time by the board of directors, unless the articles of incorporation reserve to the shareholders the right to fix the consideration. In the event that such right be reserved as to any shares, the shareholders shall, prior to the issuance of such shares, fix the consideration to be received

for such shares, by a vote of the holders of a majority of all shares entitled to vote thereon.

C. Treasury shares may be disposed of by the corporation for such consideration as may be fixed from time to time by the board of directors.

D. That part of the surplus of a corporation which is transferred to stated capital upon the issuance of shares as a share dividend shall be deemed to be the consideration for the issuance of such shares.

E. In the event of the issuance of shares by a corporation upon the conversion or exchange of its indebtedness or shares, the consideration for the shares so issued shall be:

(1) The principal sum of, and accrued interest on, the indebtedness so exchanged or converted, or the stated capital then represented by the shares so exchanged or converted, and

(2) That part of surplus, if any, transferred to stated capital upon the issuance of shares for the shares so exchanged or converted, and

(3) Any additional consideration paid to the corporation upon the issuance of shares for the indebtedness or shares so exchanged or converted.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1973, 63rd Leg., p. 1490, ch. 545, § 9, eff. Aug. 27, 1973.]

Art. 2.16. Payment for Shares

A. The consideration paid for the issuance of shares shall consist of money paid, labor done, or property actually received. Shares may not be issued until the full amount of the consideration, fixed as provided by law, has been paid. When such consideration shall have been paid to the corporation or to a corporation of which all of the outstanding shares of each class are owned by the corporation, the shares shall be deemed to have been issued and the subscriber or 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.

B. Neither promissory notes nor the promise of future services shall constitute payment or part payment for the issuance of shares of a corporation.

C. In the absence of fraud in the transaction, the judgment of the board of directors or the shareholders, as the case may be, as to the value of the consideration received for shares shall be conclusive.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1971, 62nd Leg., p. 1173, ch. 276, § 1, eff. May 19, 1971; Acts 1983, 68th Leg., p. 3150, ch. 540, § 4, eff. Aug. 29, 1983.]

Art. 2.17. Determination of Amount of Stated Capital

A. In case of the issuance by a corporation of shares having a par value, the consideration received therefor shall constitute stated capital to the extent of the par value of such shares, and the excess, if any, of such consideration shall constitute capital surplus.

B. In case of the issuance by a corporation of shares without par value, the consideration fixed by the corporation in the manner provided by law shall constitute stated capital, unless the corporation shall determine as provided in this section that only a part thereof shall be stated capital. Within a period of sixty (60) days after the issuance of any shares without par value, the board of directors may allocate to capital surplus not more than twenty-five per cent (25%) of the consideration received for the issuance of such shares. No such allocation shall be made of any portion of the consideration received for shares without par value having a preference in the assets of the corporation in the event of voluntary liquidation except the amount, if any, of such consideration in excess of such preference.

C. The stated capital of a corporation may be increased from time to time by resolution of the board of directors directing that all or part of the surplus of the corporation be transferred to stated capital.

D. If shares have been or shall be issued by a corporation in merger or consolidation or in acquisition of all or substantially all of the outstanding shares or of the property and assets of another corporation, whether domestic or foreign, any amount that would otherwise constitute capital surplus under the foregoing provisions of this Article may instead be allocated to earned surplus by the Board of Directors of the issuing corporation except that its aggregate earned surplus shall not exceed the sum of the earned surpluses as defined in this Act of the issuing corporation and of all other corporations, domestic or foreign, that were merged or consolidated or of which the shares or assets were acquired.

E. (1) Determinations of the net assets and the surplus of a corporation, and each of their components, may be based on:

(a) financial statements of the corporation, including without limitation financial statements that include subsidiary corporations or other corporations accounted for on a consolidated basis or on the equity method of accounting, that present the financial condition of the corporation in accordance with generally accepted accounting principles;

(b) financial statements prepared on the basis of accounting used to file the corporation's federal income tax return or any other accounting practices

and principles that are reasonable in the circumstances;

(c) financial information, including without limitation condensed or summary financial statements, that is prepared on a basis consistent with the financial statements referred to in Subsections (1) and (2) of this section;

(d) a fair valuation or information from any other method that is reasonable in the circumstances; or

(e) any combination of the statements or information authorized by this section.

(2) This Section E and the determinations made in accordance with this section do not apply to the calculation of the Texas franchise tax or any other tax imposed on corporations under the laws of this state.

F. In the case of a purchase, redemption, or other acquisition of a corporation's shares, payment of a dividend, or a distribution to shareholders, the amount of surplus shall be determined as of the date of the authorization of that action by the directors if payment is made on or before the 120th day after the date of authorization, or as of the date of payment if payment is made after the 120th day after the date of authorization. For the purposes of this section, payment for shares acquired in consideration of any indebtedness or deferred payment obligation of the corporation is deemed to have been made on the date the indebtedness or obligation is incurred.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1967, 60th Leg., p. 1719, ch. 657, § 4A, eff. June 17, 1967; Acts 1983, 68th Leg., p. 3150, ch. 540, § 5, eff. Aug. 29, 1983.]

Art. 2.18. Expenses of Organization, Reorganization, and Financing

A. The reasonable charges and expenses of organization or reorganization of a corporation, and the reasonable expenses of and compensation for the sale or underwriting of its shares, may be paid or allowed by such corporation out of the consideration received by it in payment for its shares without thereby rendering such shares not fully paid and non-assessable.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1957, 55th Leg., p. 111, ch. 54, § 1.]

Art. 2.19. Certificates Representing Shares

A. A corporation shall deliver certificates representing shares to which shareholders are entitled, or the shares of a corporation may be uncertificated shares. Unless otherwise provided by the articles of incorporation or by-laws, the board of directors of a corporation may provide by resolution that some or all of any or all classes and series of its shares shall be uncertificated shares, provided that such resolution shall not apply to shares represent-

ed by a certificate until such certificate is surrendered to the corporation. Certificates representing shares shall be signed by the president or a vice president and either the secretary or assistant secretary or such officer or officers as the by-laws of the corporation shall prescribe, and may be sealed with the seal of the corporation or a facsimile thereof. The signatures of the president or vice president, secretary or assistant secretary or such officer or officers as the by-laws of the corporation shall prescribe upon a certificate may be facsimiles, if the certificate is countersigned by a transfer agent or registered by a registrar, either of which is other than the corporation itself or an employee of the corporation. In case any officer who has signed or whose facsimile signature has been placed upon such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer at the date of its issuance.

B. In the event a corporation is authorized to issue shares of more than one class, each certificate representing shares issued by such corporation (1) shall conspicuously set forth on the face or back of the certificate a full statement of (a) all of the designations, preferences, limitations, and relative rights of the shares of each class authorized to be issued and, (b) if the corporation is authorized to issue shares of any preferred or special class in series, the variations in the relative rights and preferences of the shares of each such series to the extent they have been fixed and determined and the authority of the board of directors to fix and determine the relative rights and preferences of subsequent series; or (2) shall conspicuously state on the face or back of the certificate that (a) such a statement is set forth in the articles of incorporation on file in the office of the Secretary of State and (b) the corporation will furnish a copy of such statement to the record holder of the certificate without charge on written request to the corporation at its principal place of business or registered office. In the event a corporation has by its articles of incorporation limited or denied the preemptive right of shareholders to acquire unissued or treasury shares of the corporation, each certificate representing shares issued by such corporation (1) shall conspicuously set forth on the face or back of the certificate a full statement of the limitation or denial of preemptive rights contained in the articles of incorporation, or (2) shall conspicuously state on the face or back of the certificate that (a) such a statement is set forth in the articles of incorporation on file in the office of the Secretary of State and (b) the corporation will furnish a copy of such statement to the record holder of the certificate without charge on request to the corporation at its principal place of business or registered office.

C. Each certificate representing shares shall state upon the face thereof:

(1) That the corporation is organized under the laws of this State.

(2) The name of the person to whom issued.

(3) The number and class of shares and the designation of the series, if any, which such certificate represents.

(4) The par value of each share represented by such certificate, or a statement that the shares are without par value.

D. In accordance with Chapter 8, Business & Commerce Code, a corporation shall, after the issuance or transfer of uncertificated shares, send to the registered owner of uncertificated shares a written notice containing the information required to be set forth or stated on certificates pursuant to this Act. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated shares and the rights and obligations of the holders of certificates representing shares of the same class and series shall be identical. No share shall be issued until the consideration therefor, fixed as provided by law, has been fully paid.

E. No requirement of this Act with respect to matters to be set forth on certificates representing shares of a corporation shall apply to or affect certificates outstanding, when such requirement first becomes applicable to such certificates; but such requirements shall apply to all certificates thereafter issued whether in connection with an original issue of shares, a transfer of shares or otherwise. No certificate representing shares in which any provision of the articles of incorporation, or by-laws, or resolution, or agreement restricting the transfer of shares, shall have been incorporated by reference pursuant to the provisions of Section F of this Article prior to its amendment shall be invalidated or affected by such amendment; but such incorporation by reference shall not be used on certificates hereafter issued whether in connection with an original issue of shares, a transfer of shares, or otherwise.

F. Repealed by Acts 1975, 64th Leg., p. 322, ch. 134, § 22, eff. Sept. 1, 1975.

G. In the event any restriction on the transfer, or registration of the transfer, of shares shall be imposed or agreed to by the corporation, as permitted by this Act, each certificate representing shares so restricted (1) shall conspicuously set forth a full or summary statement of the restriction on the face of the certificate, or (2) shall set forth such statement on the back of the certificate and conspicuously refer to the same on the face of the certificate, or (3) shall conspicuously state on the face or back of the certificate that such a restriction exists pursuant to a specified document and (a) that the corporation will furnish to the record holder of the certificate without charge upon written request to the corporation at its principal place of business or

registered office a copy of the specified document, or (b) if such document is one required or permitted to be and has been filed under this Act, that such specified document is on file in the office of the Secretary of State and contains a full statement of such restriction. Unless such document was on file in the office of the Secretary of State at the time of the request, a corporation which fails within a reasonable time to furnish the record holder of a certificate upon such request and without charge a copy of the specified document shall not be permitted thereafter to enforce its rights under the restriction imposed on the shares represented by such certificate.

H. Repealed by Acts 1975, 64th Leg., p. 322, ch. 134, § 22, eff. Sept. 1, 1975.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1957, 55th Leg., p. 111, ch. 54, § 2; Acts 1973, 63rd Leg., p. 1490, ch. 545, § 10, eff. Aug. 27, 1973; Acts 1975, 64th Leg., p. 305, ch. 134, §§ 2, 3, 22, Sept. 1, 1975; Acts 1983, 68th Leg., p. 2565, ch. 442, § 3, eff. Sept. 1, 1983.]

Art. 2.20. Issuance of Fractional Shares or Scrip

A. A corporation may (1) issue fractions of a share, either represented by a certificate or uncertificated, (2) arrange for the disposition of fractional interests by those entitled thereto, (3) pay in cash the fair value of fractions of a share as of the time when those entitled to receive such fractions are determined, or (4) issue scrip in registered or bearer form which shall entitle the holder to receive a certificate for a full share or an uncertificated full share upon the surrender of such scrip aggregating a full share. A certificate for a fractional share or an uncertificated fractional share shall, but scrip shall not unless otherwise provided therein, entitle the holder to exercise voting rights, to receive dividends thereon, and to participate in any of the assets of the corporation in the event of liquidation. The board of directors may cause scrip to be issued subject to the condition that it shall become void if not exchanged for certificates representing full shares or uncertificated full shares before a specified date, or subject to the condition that the shares for which such scrip is exchangeable may be sold by the corporation and the proceeds thereof distributed to the holders of scrip, or subject to any other conditions which the board of directors may determine advisable.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1973, 63rd Leg., p. 1492, ch. 545, § 11, eff. Aug. 27, 1973; Acts 1983, 68th Leg., p. 2566, ch. 442, § 4, eff. Sept. 1, 1983.]

Art. 2.21. Liability of Subscribers and Shareholders

A. A holder of certificated shares or uncertificated shares or a subscriber whose subscription has been accepted shall be under no obligation to the corporation or to its creditors with respect to such

shares other than the obligation to pay to the corporation the full amount of the consideration, fixed as provided by law, for which such shares were issued or to be issued.

B. Any person becoming an assignee or transferee of certificated shares or of uncertificated shares or of a subscription for 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 corporation 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 personally liable as a holder of or subscriber to shares of a corporation, but the estate and funds in his hands shall be so liable.

D. No pledgee or other holder of shares as collateral security shall be personally liable as a shareholder.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1983, 68th Leg., p. 2566, ch. 442, § 5, eff. Sept. 1, 1983.]

Art. 2.22. Transfer of Shares and Other Securities and Restrictions on Transfer

A. The shares and other securities of a corporation shall be personal property for all purposes and shall be transferable in accordance with the provisions of Chapter 8—Investment Securities—of the Business & Commerce Code, as amended,¹ except as otherwise provided in this Act.

B. A restriction on the transfer or registration of transfer of a security may be imposed by the articles of incorporation, or by-laws, or a written agreement among any number of the holders of such securities, or a written agreement among any number of the holders and the corporation provided a counterpart of such agreement shall be placed on file by the corporation at its principal place of business and its registered office and shall be subject to the same right of examination by a shareholder of the corporation, in person or by agent, attorney or accountant, as are the books and records of the corporation. No restriction so imposed shall be valid with respect to any security issued prior to the adoption of the restriction unless the holder of the security voted in favor of the restriction or is a party to the agreement imposing it.

C. Any restriction on the transfer or registration of transfer of a security of a corporation, if reasonable and noted conspicuously on the security may be enforced against the holder of the restricted security or any successor or transferee of the holder including an executor, administrator, trustee, guardian, or other fiduciary entrusted with like responsibility for the person or estate of the holder. Unless noted conspicuously on the security, a restriction,

even though otherwise enforceable, is ineffective except against a person with actual knowledge of the restriction.

D. In particular and without limiting the general power granted in Sections B and C of this Article to impose reasonable restrictions, a restriction on the transfer or registration of transfer of securities of a corporation shall be valid if it reasonably:

(1) Obligates the holders of the restricted securities to offer to the corporation or to any other holders of securities of the corporation or to any other person or to any combination of the foregoing, a prior opportunity, to be exercised within a reasonable time, to acquire the restricted securities; or

(2) Obligates the corporation to the extent permitted by this Act or any holder of securities of the corporation or any other person, or any combination of the foregoing, to purchase the securities which are the subject of an agreement respecting the purchase and sale of the restricted securities; or

(3) Requires the corporation or the holders of any class of securities of the corporation to consent to any proposed transfer of the restricted securities or to approve the proposed transferee of the restricted securities for the purpose of preventing violations of federal or state laws; or

(4) Prohibits the transfer of the restricted securities to designated persons or classes of persons, and such designation is not manifestly unreasonable; or

(5) Maintains the status of the corporation as an electing small business corporation under Subchapter S of the United States Internal Revenue Code² or as a close corporation under Part Twelve of this Act.

E. A corporation that has adopted a bylaw, or is a party to an agreement, restricting the transfer of its shares or other securities may file such bylaw or agreement as a matter of public record with the Secretary of State, as follows:

(1) The corporation shall file a copy of the bylaw or agreement in the office of the Secretary of State together with an attached statement setting forth:

(a) the name of the corporation;

(b) that the copy of the bylaw or agreement is a true and correct copy of the same; and

(c) that such filing has been duly authorized by the board of directors or, in the case of a close corporation that, in conformance with Part Twelve of this Act, is managed in some other manner pursuant to a shareholders' agreement, by the shareholders or by the persons empowered by the agreement to manage its business and affairs.

(2) Such statement shall be executed by the corporation by its president or a vice-president and verified by the officer signing such statement. The original and a copy of the statement shall be deliv-

ered to the Secretary of State with copies of such bylaw or agreement restricting the transfer of shares or other securities attached thereto. If the Secretary of State finds that such statement conforms to law and the appropriate filing fee has been paid as prescribed by law, he shall:

(a) endorse on the original and the copy the word "Filed", and the month, day, and year of the filing thereof;

(b) file the original in his office; and

(c) return the copy to the corporation or its representative.

(3) After the filing of such statement by the Secretary of State, the bylaw or agreement restricting the transfer of shares or other securities shall become a matter of public record and the fact of such filing shall be stated on any certificate representing the shares or other securities so restricted if required by Section G, Article 2.19, of this Act.

F. A corporation that is a party to an agreement restricting the transfer of its shares or other securities may make such agreement part of its articles of incorporation without restating the provisions of such agreement therein by complying with the provisions of Part Four of this Act for amendment of the articles of incorporation. If such agreement shall alter any provision of the original or amended articles of incorporation, the articles of amendment shall identify by reference or description the altered provision. If such agreement is to be an addition to the original or amended articles of incorporation, the articles of amendment shall state that fact. The articles of amendment shall have attached thereto a copy of the agreement restricting the transfer of shares or other securities, and shall state that the attached copy of such agreement is a true and correct copy of the same and that its inclusion as part of the articles of incorporation has been duly authorized in the manner required by this Act to amend the articles of incorporation.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1957, 55th Leg., p. 111, ch. 54, §§ 3, 4; Acts 1967, 60th Leg., p. 1719, ch. 657, § 5, eff. June 17, 1967; Acts 1973, 63rd Leg., p. 1493, ch. 545, § 12, eff. Aug. 27, 1973; Acts 1975, 64th Leg., p. 306, ch. 134, §§ 4 and 5, Sept. 1, 1975; Acts 1979, 66th Leg., p. 223, ch. 120, § 26, eff. May 9, 1979; Acts 1981, 67th Leg., p. 838, ch. 297, § 14, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 3113, ch. 818, § 3, eff. Aug. 31, 1981.]

¹ Business and Commerce Code, § 8.101 et seq.
² 26 U.S.C.A. § 1371 et seq.

Art. 2.22-1. Shareholders' Preemptive Rights

A. The shareholders of a corporation shall have a preemptive right to acquire additional, unissued, or treasury shares of the corporation, or securities of the corporation convertible into or carrying a right to subscribe to or acquire shares, except to the

extent limited or denied by this Article or by the articles of incorporation.

B. Unless otherwise provided in the articles of incorporation,

(1) No preemptive right shall exist:

(a) to acquire any shares issued to employees pursuant to approval by the affirmative vote of the holders of a majority of the shares entitled to vote thereon or when authorized by and consistent with a plan theretofore approved by such a vote of shareholders; or

(b) to acquire any shares sold otherwise than for cash.

(2) Holders of shares of any class that is preferred or limited as to dividends or assets shall not be entitled to any preemptive right.

(3) Holders of shares of common stock shall not be entitled to any preemptive right to shares of any class that is preferred or limited as to dividends or assets or to any obligations, unless convertible into shares of common stock or carrying a right to subscribe to or acquire shares of common stock.

(4) Holders of common stock without voting power shall have no preemptive right to shares of common stock with voting power.

(5) The preemptive right shall be only an opportunity to acquire shares or other securities under such terms and conditions as the board of directors may fix for the purpose of providing a fair and reasonable opportunity for the exercise of such right.

[Acts 1973, 63rd Leg., p. 1494, ch. 545, § 13, eff. Aug. 27, 1973.]

Art. 2.23. Bylaws

A. The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend, or repeal the bylaws or adopt new bylaws, subject to repeal or change by action of the shareholders, shall be vested in the board of directors unless reserved to the shareholders by the articles of incorporation. The bylaws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law or the articles of incorporation.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1973, 63rd Leg., p. 1494, ch. 545, § 14, eff. Aug. 27, 1973.]

Art. 2.24. Meetings of Shareholders

A. Meetings of shareholders may be held at such place within or without this State as may be stated in or fixed in accordance with the bylaws. If no other place is so stated or fixed, meetings shall be held at the registered office of the corporation.

B. An annual meeting of the shareholders shall be held at such time as may be stated in or fixed in accordance with the bylaws. If the annual meeting

is not held within any 13-month period, any court of competent jurisdiction in the county in which the principal office of the corporation is located may, on the application of any shareholder, summarily order a meeting to be held. Failure to hold the annual meeting at the designated time shall not work a dissolution of the corporation.

C. Special meetings of the shareholders may be called by the president, the board of directors, the holders of not less than one-tenth of all the shares entitled to vote at the meetings, or such other persons as may be authorized in the articles of incorporation or the bylaws.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1973, 63rd Leg., p. 1494, ch. 545, § 15, eff. Aug. 27, 1973.]

Art. 2.25. Notice of Shareholders' Meetings

A. 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 president, the secretary, or the 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 stock transfer books of the corporation, with postage thereon prepaid.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

Art. 2.26. Closing of Transfer Books and Fixing Record Date

A. For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors of a corporation may provide that the stock transfer books shall be closed for a stated period but not to exceed, in any case, fifty (50) days. If the stock transfer books shall be closed for the purpose of determining shareholders entitled to notice of or to vote at a meeting of shareholders, such books shall be closed for at least ten (10) days immediately preceding such meeting. In lieu of closing the stock transfer books, the bylaws, or in the absence of an applicable bylaw the board of directors, may fix in advance a date as the record date for any such determination of shareholders, such date in any case to be not more than fifty (50) days and, in case of a meeting of shareholders, not less than ten (10) days prior to the date on which the particular action, requiring such determination of shareholders is to be taken. If the stock transfer books are not closed and no record date is fixed for the determina-

tion of shareholders entitled to notice of or to vote at a meeting of shareholders, or shareholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the board of directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of shareholders. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this Article, such determination shall apply to any adjournment thereof except where the determination has been made through the closing of stock transfer books and the stated period of closing has expired.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

Art. 2.27. Voting List

A. The officer or agent having charge of the stock transfer books for shares of a corporation shall make, at least ten (10) days before each meeting of shareholders, a complete list of the shareholders entitled to vote at such meeting or any adjournment thereof, arranged in alphabetical order, with the address of and the number of shares held by each, which list, for a period of ten (10) days prior to such meeting, shall be kept on file at the registered office of the corporation and shall be subject to inspection by any shareholder at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting. The original stock transfer books shall be prima-facie evidence as to who are the shareholders entitled to examine such list or transfer books or to vote at any meeting of shareholders.

B. Failure to comply with the requirements of this Article shall not affect the validity of any action taken at such meeting.

C. An officer or agent having charge of the stock transfer books who shall fail to prepare the list of shareholders or keep the same on file for a period of ten (10) days, or produce and keep it open for inspection at the meeting, as provided in this Article, shall be liable to any shareholder suffering damage on account of such failure, to the extent of such damage. In the event that such officer or agent does not receive notice of a meeting of shareholders sufficiently in advance of the date of such meeting reasonably to enable him to comply with the duties prescribed by this Article, the corporation, but not such officer or agent, shall be liable to any shareholder suffering damage on account of such failure, to the extent of such damage.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

Art. 2.28. Quorum of Shareholders

A. Unless otherwise provided in the articles of incorporation, 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 articles of incorporation or bylaws.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

Art. 2.29. Voting of Shares

A. (1) Each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders, except:

(a) To the extent that the articles of incorporation provide for more or less than one vote per share or (if and to the extent permitted by this Act) limit or deny voting rights to the holders of the shares of any class or series, or

(b) As otherwise provided by this Act.

(2) If the articles of incorporation provide for more or less than one vote per share for all the outstanding shares or for the shares of any class or any series on any matter, every reference in this Act (or in the articles of incorporation or bylaws, unless expressly stated otherwise therein), in connection with such matter, to a specified portion of such shares shall mean such portion of the votes entitled to be cast in respect of such shares by virtue of the provisions of such articles of incorporation.

B. Treasury shares, shares of its own stock owned by another corporation the majority of the voting stock of which is owned or controlled by it, and shares of its own stock held by a corporation in a fiduciary capacity shall not be voted, directly or indirectly, at any meeting, and shall not be counted in determining the total number of outstanding shares at any given time.

C. 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. A proxy shall be revocable unless expressly provided therein to be irrevocable and unless otherwise made irrevocable by law.

D. (1) At each election for directors 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 directors to be elected and for whose election he has a right to vote, or unless expressly prohibited by the articles of incorporation to

cumulate his votes by giving one candidate as many votes as the number of such directors multiplied by his shares shall equal, or by distributing such votes on the same principle among any number of such candidates.

(2) Any shareholder who intends to cumulate his votes as herein authorized shall give written notice of such intention to the secretary of the corporation on or before the day preceding the election at which such shareholder intends to cumulate his votes. All shareholders may cumulate their votes if any shareholder gives the written notice provided for herein.

E. Shares standing in the name of another corporation, domestic or foreign, may be voted by such officer, agent, or proxy as the bylaws of such corporation may authorize or, in the absence of such authorization, as the board of directors of such corporation may determine; provided, however, that when any foreign corporation without a permit to do business in this State lawfully owns or may lawfully own or acquire stock in Texas corporation, it shall not be unlawful for such foreign corporation to vote said stock and participate in the management and control of the business and affairs of such Texas corporation, as other stockholders, subject to all laws, rules and regulations governing Texas corporations and especially subject to the provisions of the Anti-Trust laws of the State of Texas.

F. Shares held by an administrator, executor, guardian, or conservator may be voted by him so long as such shares forming a part of an estate are in the possession and forming a part of the estate being served by him, either in person or by proxy, without a transfer of such shares into his name. Shares standing in the name of a trustee may be voted by him, either in person or by proxy, but no trustee shall be entitled to vote shares held by him without a transfer of such shares into his name as trustee.

G. Shares standing in the name of a receiver may be voted by such a receiver, and shares held by or under the control of a receiver may be voted by such receiver without the transfer thereof into his name if authority so to do be contained in an appropriate order of the court by which such receiver was appointed.

H. A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1957, 55th Leg., p. 111, ch. 54, § 4A; Acts 1961, 57th Leg., p. 893, ch. 393, § 1, eff. June 1, 1964; Acts 1961, 57th Leg., p. 423, ch. 206, § 1; Acts 1967, 60th Leg., p. 1719, ch. 657, § 6, eff. June 17, 1967; Acts 1973, 63rd Leg., p. 1495, ch. 545, §§ 16, 17, eff. Aug. 27, 1973.]

Art. 2.30. Voting Trusts and Voting Agreements

A. Any number of shareholders of a corporation may create a voting trust for the purpose of conferring upon a trustee or trustees the right to vote or otherwise represent their shares, for a period of not to exceed ten (10) years, by entering into a written voting trust agreement specifying the terms and conditions of the voting trust, by depositing a counterpart of the agreement with the corporation at its registered office, and by transferring their shares to such trustee or trustees for the purposes of the agreement. The counterpart of the voting trust agreement so deposited with the corporation shall be subject to the same right of examination by a shareholder of the corporation, in person or by agent or attorney, as are the books and records of the corporation, and shall be subject to examination by any holder of a beneficial interest in the voting trust, either in person or by agent or attorney, at any reasonable time for any proper purpose.

B. Any number of shareholders may enter into a voting agreement in writing for the purpose of voting their shares as a unit, in the manner prescribed in the agreement, on any matter submitted to a vote at a meeting of the shareholders for a period not exceeding ten (10) years from the date of the execution of the agreement. A counterpart of the agreement shall be deposited with the corporation at its principal office and shall be subject to the same right of examination by a shareholder of the corporation, in person or by agent or attorney, as are the books and records of the corporation. Each certificate representing shares held by the parties to the agreement shall contain a statement that the shares represented by the certificate are subject to the provisions of a voting agreement, a counterpart of which has been deposited with the corporation at its principal office. Upon such deposit of the counterpart of the agreement and endorsement of the prescribed statement upon the certificates representing shares, the agreement shall be specifically enforceable in accordance with the principles of equity.

[Acts 1955, 54th Leg., p. 239, ch. 64, eff. Sept. 6, 1955. Amended by Acts 1961, 57th Leg., p. 423, ch. 206, § 2.]

Arts. 2.30-1 to 2.30-5. Repealed by Acts 1981, 67th Leg., p. 3118, ch. 818, § 9, eff. Aug. 31, 1981

See, now, art. 12.01 et seq.

Art. 2.31. Board of Directors

A. The business and affairs of a corporation shall be managed by a board of directors. Directors need not be residents of this State or shareholders of the corporation unless the articles of incorporation or bylaws so require. The articles of incorporation or bylaws may prescribe other qualifications for directors.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

Art. 2.32. Number and Election of Directors

A. The board of directors of a corporation shall consist of one or more members. The number of directors shall be fixed by, or in the manner provided in, the articles of incorporation or the bylaws, except as to the number constituting the initial board of directors, which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to or in the manner provided in, the articles of incorporation or the bylaws, but no decrease shall have the effect of shortening the term of any incumbent director. In the absence of a bylaw providing for the number of directors, the number shall be the same as that provided for in the articles of incorporation. The names and addresses of the members of the initial board of directors shall be stated in the articles of incorporation. Unless removed in accordance with the provisions of the bylaws or the articles of incorporation, such persons shall hold office until the first annual meeting of shareholders, and until their successors shall have been elected and qualified. At the first annual meeting of shareholders and at each annual meeting thereafter the shareholders shall elect directors to hold office until the next succeeding annual meeting, except in case of the classification of directors as permitted by this Act. Unless removed in accordance with provisions of the bylaws or the articles of incorporation, each director shall hold office for the term for which he is elected and until his successor shall have been elected and qualified. The bylaws or the articles of incorporation may provide that at any meeting of shareholders called expressly for that purpose any director or the entire board of directors may be removed, with or without cause, by a vote of the holders of a majority of the shares then entitled to vote at an election of directors, subject to any further restrictions on removal which may be contained in the bylaws. In the case of a corporation having cumulative voting, if less than the entire board is to be removed, no one of the directors may be removed if the votes cast against his removal would be sufficient to elect him if then cumulatively voted at an election of the entire board of directors, or if there be classes of directors, at an election of the class of directors of which he is a part.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1973, 63rd Leg., p. 1500, ch. 545, § 23, eff. Aug. 27, 1973.]

Art. 2.33. Classification of Directors

A. When the board of directors shall consist of nine or more members, in lieu of electing the whole number of directors annually, the bylaws may provide that the directors be divided into either two or three classes, each class to be as nearly equal in number as possible, the terms of office of directors of the first class to expire at the first annual meeting of shareholders after their election, that of

the second class to expire at the second annual meeting after their election, and that of the third class, if any, to expire at the third annual meeting after their election. At each annual meeting after such classification the number of directors equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the second succeeding annual meeting, if there be two classes, or until the third succeeding annual meeting, if there be three classes. No classification of directors shall be effective prior to the first annual meeting of shareholders.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

Art. 2.34. Vacancies

A. Any vacancy occurring in the board of directors may be filled in accordance with Section C of this article or may be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the board of directors. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office.

B. A directorship to be filled by reason of an increase in the number of directors may be filled in accordance with Section C of this article or may be filled by the board of directors for a term of office continuing only until the next election of one or more directors by the shareholders; provided that the board of directors may not fill more than two such directorships during the period between any two successive annual meetings of shareholders.

C. Any vacancy occurring in the board of directors or any directorship to be filled by reason of an increase in the number of directors may be filled by election at an annual or special meeting of shareholders called for that purpose.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1983, 68th Leg., p. 3151, ch. 540, § 6, eff. Aug. 29, 1983.]

Art. 2.35. Quorum of Directors

A. A majority of the number of directors fixed by, or in the manner provided in, the articles of incorporation or the bylaws shall constitute a quorum for the transaction of business unless a greater number is required by law or the articles of incorporation or the bylaws. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by law or the articles of incorporation or the bylaws.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1973, 63rd Leg., p. 1501, ch. 545, § 24, eff. Aug. 27, 1973.]

Art. 2.36. Executive and Other Committees

A. If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the full board of directors, may designate from among its members an executive committee and one or more other committees,

each of which, to the extent provided in such resolution or in the articles of incorporation or in the bylaws of the corporation, shall have and may exercise all of the authority of the board of directors, except that no such committee shall have the authority of the board of directors in reference to amending the articles of incorporation, approving a plan of merger or consolidation, recommending to the shareholders the sale, lease, or exchange of all or substantially all of the property and assets of the corporation otherwise than in the usual and regular course of its business, recommending to the shareholders a voluntary dissolution of the corporation or a revocation thereof, amending, altering, or repealing the bylaws of the corporation or adopting new bylaws for the corporation, filling vacancies in the board of directors or any such committee, filling any directorship to be filled by reason of an increase in the number of directors, electing or removing officers or members of any such committee, fixing the compensation of any member of such committee, or altering or repealing any resolution of the board of directors which by its terms provides that it shall not be so amendable or repealable; and, unless such resolution, the articles of incorporation, or the bylaws of the corporation expressly so provide, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of shares of the corporation. The designation of such committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any member thereof, of any responsibility imposed by law.

[Acts 1955, 54th Leg., p. 239, ch. 64, eff. Sept. 6, 1955. Amended by Acts 1973, 63rd Leg., p. 1501, ch. 545, § 25, eff. Aug. 27, 1973; Acts 1975, 64th Leg., p. 316, ch. 134, § 13, eff. Sept. 1, 1975; Acts 1983, 68th Leg., p. 3152, ch. 540, § 7, eff. Aug. 29, 1983.]

Art. 2.37. Place and Notice of Directors' Meetings

A. Meetings of the board of directors, regular or special, may be held either within or without this State.

B. Regular meetings of the board of directors may be held with or without notice as prescribed in the bylaws. Special meetings of the board of directors shall be held upon such notice as is prescribed in the bylaws. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting, unless required by the bylaws.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

Art. 2.38. Dividends

A. The board of directors of a corporation may, from time to time, declare, and the corporation may pay, dividends on its outstanding shares in cash, in property, or in its own shares, except when the corporation is insolvent or when the payment thereof would render the corporation insolvent or when the declaration or payment thereof would be contrary to any restrictions contained in the articles of incorporation, subject to the following provisions:

(1) Dividends may be declared and paid in cash or property only out of the unreserved and unrestricted earned surplus of the corporation, except as otherwise provided in this Act.

(2) Dividends may be declared and paid in its own shares out of any treasury shares that have been reacquired out of surplus of the corporation.

(3) Dividends may be declared and paid in its own authorized but unissued shares out of unrestricted surplus of the corporation upon the following conditions:

(a) If a dividend is payable in its own shares having a par value, such shares shall be issued at the par value thereof and there shall be transferred to stated capital at the time such dividend is paid an amount of surplus equal to the aggregate par value of the shares to be issued as a dividend.

(b) If a dividend is payable in its own shares without par value, such shares shall be issued at such value as shall be fixed by the board of directors by resolution adopted at the time such dividend is declared, and there shall be transferred to stated capital at the time such dividend is paid an amount of surplus equal to the aggregate value so fixed in respect of such shares; and the amount per share so transferred to stated capital shall be disclosed to the shareholders receiving such dividend concurrently with the payment thereof.

(4) No dividend payable in shares of any class shall be paid to the holders of shares of any other class unless the articles of incorporation so provide or unless such payment is authorized by the affirmative vote or the written consent of the holders of at least a majority of the outstanding shares of the class in which the payment is to be made.

B. A split-up or division of the issued shares of any class into a greater number of shares of the same class without increasing the stated capital of the corporation shall not be construed to be a share dividend within the meaning of this Article.

C. The board of directors must, when requested by the holders of at least one third of the outstanding shares of the corporation, present written reports of the situation and amount of business of the corporation and, subject to limitations on the authority of the board of directors by provisions of law, or the articles of incorporation or the bylaws,

the board shall declare and provide for payment of such dividends of the profits from the business of the corporation as such board shall deem expedient.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

Art. 2.39. Dividends of Consuming Assets Corporation

A. In addition to dividends otherwise authorized by law, the board of directors of a consuming assets corporation may declare, and the corporation may pay, dividends on its outstanding shares in cash or in property in an amount not exceeding the total amount of the depletion and amortization reserves created by the corporation, subject to the following conditions and limitations:

(1) No dividend shall be declared or paid by authority of this Article if the declaration or payment thereof would be contrary to any restrictions contained in the articles of incorporation, or if the corporation is insolvent, or if such dividend would render the corporation insolvent, or if, after payment of the dividend and after such provision is made for depletion and amortization as would fairly reflect the decrease in value of the corporate assets, the assets of the corporation would not exceed its liabilities.

(2) No such dividend shall be paid to the holders of any class of shares unless all cumulative dividends accrued on all preferred or special classes of shares entitled to preferential dividends shall have been fully paid.

(3) No such dividend shall be paid to the holders of any class of shares which would reduce the remaining net assets of the corporation, after such provision for depletion and amortization reserves is made as will fairly reflect the decrease in value of corporate assets, below the aggregate preferential amount payable in the event of voluntary liquidation to the holders of shares having preferential rights to the assets of the corporation in the event of liquidation.

(4) When any dividend is paid in whole or in part by authority of this Article, all notices, reports, financial statements, and other official corporate references to such dividend shall clearly indicate what part of such dividend is so paid.

(5) Any such dividend shall be carried on the accounting records of the corporation in a separate account or accounts, which shall be appropriately entitled and shown on all corporate financial statements as a deduction from the respective reserve accounts on the basis of which the dividend was paid.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

Art. 2.40. Distributions in Partial Liquidation

A. The board of directors of a corporation may, from time to time, distribute to its shareholders in

partial liquidation, out of capital surplus or reduction surplus of the corporation, a portion of its assets, in cash or property, subject to the following provisions:

(1) No such distribution shall be made at a time when the corporation is insolvent or when such distribution would render the corporation insolvent. No such distribution shall be made in an amount that would impair the ability of the corporation to carry on the business of the corporation to the extent contemplated by its board of directors if any subsequent operations by the corporation are so contemplated.

(2) No such distribution out of reduction surplus shall be made unless such distribution is authorized by the affirmative vote of the holders of at least two-thirds of the outstanding shares of each class whether or not entitled to vote thereon by the provisions of the articles of incorporation of the corporation.

(3) No such distribution shall be made to the holders of any class of shares unless all cumulative dividends accrued on all preferred or special classes of shares entitled to preferential dividends shall have been fully paid.

(4) No such distribution shall be made to the holders of any class of shares which would reduce the remaining net assets of the corporation below the aggregate preferential amount payable in the event of voluntary liquidation to the holders of shares having preferential rights to the assets of the corporation in the event of liquidation.

(5) Each such distribution, when made, shall be identified as a distribution in partial liquidation, and the amount per share shall be disclosed to the shareholders receiving the same concurrently with the distribution thereof, and if such distribution is made, wholly or in part, out of reduction surplus, the amount per share which is paid out of reduction surplus shall be disclosed to the shareholders receiving the same concurrently with the distribution thereof.

B. The board of directors of a corporation may also, from time to time, distribute to the holders of its outstanding shares having a cumulative preferential right to receive dividends, in discharge of their cumulative dividend rights, cash payments out of the unrestricted capital surplus of the corporation, if at the time the corporation has no earned surplus and is not insolvent, and would not thereby be rendered insolvent. Each such distribution, when made, shall be identified as a payment of cumulative dividends out of capital surplus.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

Art. 2.41. Liability of Directors and Shareholders in Certain Cases

A. In addition to any other liabilities imposed by law upon directors of a corporation:

(1) Directors of a corporation who vote for or assent to the declaration of any dividend or other distribution of the assets of a corporation to its shareholders that, on the date of that vote or assent, violates the provisions of this Act or any restrictions contained in the articles of incorporation, shall be jointly and severally liable to the corporation for the amount of such dividend which is paid, or the value of such assets which are distributed in excess of the amount of such dividends or distribution which could have been paid or distributed without violating the provisions of this Act or the restrictions in the articles of incorporation.

(2) Directors of a corporation who vote for or assent to a purchase of its own shares that, on the date of that vote or assent, violates the provisions of this Act shall be jointly and severally liable to the corporation for the amount of consideration paid for such shares which is in excess of the maximum amount which could have been paid therefor without violating the provisions of this Act.

(3) The directors of a corporation who vote for or assent to any distribution of assets of a corporation to its shareholders during the liquidation of the corporation without the payment and discharge of, or making adequate provision for, all debts, obligations, and liabilities of the corporation known to the directors on the date of that vote or assent shall be jointly and severally liable to the corporation for the value of such assets which are distributed, to the extent that such debts, obligations and liabilities of the corporation are not thereafter paid and discharged.

(4) The directors of a corporation who vote for or assent to the making of a loan to an officer or director of the corporation in violation of this Act shall be jointly and severally liable to the corporation for the amount of such loan until the repayment thereof.

(5) If the corporation shall commence business before it has received for the issuance of shares consideration of the value of at least One Thousand Dollars (\$1,000), consisting of money, labor done, or property actually received, the directors who assent thereto shall be jointly and severally liable to the corporation for such part of the required consideration as shall not have been received before commencing business, but such liability shall be terminated when the corporation has actually received the required consideration for the issuance of shares.

(6) In the event of the insolvency of a corporation, directors who have voted for or assented to

any payments out of the reduction surplus of the corporation, whether in the course of a distribution in partial liquidation or as the purchase price of shares issued by the corporation and later purchased by it, shall be liable to the corporation, or to its receiver or trustee in bankruptcy, to the extent of the amount of such payments made, for the purpose of discharging creditor claims against the corporation which existed at the time such payments were made or which were incurred within thirty (30) days after notice of the reduction of stated capital had been filed, but such liability shall be imposed only to the extent that such creditor claims have not been fully paid after such creditors have shared with other creditors in the assets of the corporation. Any director against whom a claim shall be asserted under this subsection, and who shall be held liable thereon, shall be entitled to contribution from the shareholders who accepted or received such payments out of reduction surplus, to the extent of the amounts of such payments received by them, respectively.

B. A director of a corporation who is present at a meeting of its board of directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

C. A director shall not be liable under subsections (1), (2) or (3) of Section A of this Article if, in the exercise of ordinary care, he relied and acted in good faith upon financial statements or other information of the corporation represented to him to be correct in all material respects by the president or by the officer of such corporation having charge of its books of account, or reported by an independent public or certified public accountant or firm of such accountants to present fairly the financial position of such corporation, nor shall he be so liable if, in the exercise of ordinary care and in good faith, in determining the amount available for any such dividend or distribution, he considered the assets to be of their book value.

D. A director 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 corporation if, in the exercise of ordinary care, he acted in good faith and in reliance upon the written opinion of an attorney for the corporation.

E. A director against whom a claim shall be asserted under this Article for the payment of a

dividend or other distribution of assets of a corporation, and who shall be held liable thereon, shall be entitled to contribution from the shareholders who accepted or received such dividend or assets knowing such dividend or distribution to have been made in violation of this Article, in proportion to the amounts received by them, respectively.

F. A director against whom a claim shall be asserted under this Article shall be entitled to contribution from the other directors who voted for or assented to the action upon which the claim is asserted.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1983, 68th Leg., p. 3153, ch. 540, § 8, eff. Aug. 29, 1983.]

Art. 2.42. Officers

A. The officers of a corporation shall consist of a president, one or more vice-presidents as may be prescribed by the bylaws, a secretary, and a treasurer, each of whom shall be elected by the board of directors at such time and in such manner as may be prescribed by the bylaws. Such other officers and assistant officers and agents as may be deemed necessary may be elected or appointed by the board of directors or chosen in such other manner as may be prescribed by the bylaws. Any two (2) or more offices may be held by the same person.

B. All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the corporation as may be provided in the bylaws, or as may be determined by resolution of the board of directors not inconsistent with the bylaws.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1981, 67th Leg., p. 3114, ch. 818, § 4, eff. Aug. 31, 1981.]

Art. 2.43. Removal of Officers

A. Any officer or agent or member of a committee elected or appointed by the board of directors may be removed by the board of directors whenever in its judgment the best interests of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent or member of a committee shall not of itself create contract rights.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1975, 64th Leg., p. 314, ch. 134, § 10, eff. Sept. 1, 1975.]

Art. 2.44. Books and Records

A. Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its shareholders and board of directors, and shall keep at its registered office or principal place of business, or at the office of its transfer agent or registrar, a record of its shareholders, giving the names and addresses of all shareholders and the number and class of the

shares held by each. Any books, records, and minutes may be in written form or in any other form capable of being converted into written form within a reasonable time.

B. Any person who shall have been a holder of record of shares for at least six (6) months immediately preceding his demand, or shall be the holder of record of at least five per cent (5%) of all the outstanding shares of a corporation, upon written demand stating the purpose thereof, shall have the right to examine, in person or by agent, accountant, or attorney, at any reasonable time or times, for any proper purpose, its relevant books and records of account, minutes, and record of shareholders, and to make extracts therefrom.

C. Any corporation which shall refuse to allow any such shareholder or his agent, accountant or attorney, so to examine and make extracts from its books and records of account, minutes, and record of shareholders, for any proper purpose, shall be liable to such shareholder for all costs and expenses, including attorneys' fees, incurred in enforcing his rights under this Article in addition to any other damages or remedy afforded him by law. It shall be a defense to any action for penalties under this section that the person suing therefor has within two (2) years sold or offered for sale any list of shareholders or of holders of voting trust certificates for shares of such corporation or any other corporation or has aided or abetted any person in procuring any list of shareholders or of holders of voting trust certificates for any such purpose, or has improperly used any information secured through any prior examination of the books and records of account, or minutes, or record of shareholders or of holders of voting trust certificates for shares of such corporation or any other corporation, or was not acting in good faith or for a proper purpose in making his demand.

D. Nothing herein contained shall impair the power of any court of competent jurisdiction, upon proof of proper purpose by a beneficial or record holder of shares, irrespective of the period of time during which such holder shall have been a beneficial or record holder and irrespective of the number of shares held by him, to compel the production for examination by such holder of the books and records of account, minutes, and record of shareholders of a corporation.

E. Upon the written request of any holder of record of shares of a corporation, the corporation shall mail to such holder its annual statements for its last fiscal year showing in reasonable detail its assets and liabilities and the results of its operations and the most recent interim statements, if any, which have been filed in a public record or otherwise published. The corporation shall be allowed a reasonable time to prepare such annual statements.

F. A holder of a beneficial interest in a voting trust complying with this Act shall be regarded as a holder of record of shares with respect to the shares represented by such beneficial interest for the purposes of this Article.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1973, 63rd Leg., p. 1502, ch. 545, § 26, eff. Aug. 27, 1973.]

PART THREE

Art. 3.01. Incorporators

A. Any natural person of the age of eighteen (18) years or more, or any partnership, corporation, association, trust, or estate (without regard to place of residence, domicile, or organization) may act as an incorporator of a corporation by signing and verifying the articles of incorporation for such corporation and by delivering the original and a copy of the articles of incorporation to the Secretary of State.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1975, 64th Leg., p. 315, ch. 134, § 11, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 224, ch. 120, § 27, eff. May 9, 1979.]

Art. 3.02. Articles of Incorporation

A. The articles of incorporation shall set forth:

- (1) The name of the corporation;
- (2) The period of duration, which may be perpetual;
- (3) The purpose or purposes for which the corporation is organized which may be stated to be, or to include, the transaction of any or all lawful business for which corporations may be incorporated under this Act;
- (4) The aggregate number of shares which the corporation shall have authority to issue; if such shares are to consist of one class only, the par value of each of such shares, or a statement that all of such shares are without par value; or, if such shares are to be divided into classes, the number of shares of each class, and a statement of the par value of the shares of each class or that such shares are to be without par value;
- (5) If the shares are to be divided into classes, the designation of each class and statement of the preferences, limitations, and relative rights in respect of the shares of each class;
- (6) If the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between series insofar as the same are to be fixed in the articles of incorporation, and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations

in the relative rights and preferences as between series;

(7) A statement that the corporation will not commence business until it has received for the issuance of shares consideration of the value of a stated sum which shall be at least One Thousand Dollars (\$1,000.00), consisting of money, labor done, or property actually received;

(8) Any provision limiting or denying to shareholders the preemptive right to acquire additional or treasury shares of the corporation;

(9) If a corporation elects to become a close corporation in conformance with Part Twelve of this Act, any provision (a) required or permitted by this Act to be stated in the articles of incorporation of a close corporation, but not in the articles of incorporation of an ordinary corporation, (b) contained in a shareholders' agreement in conformance with Part Twelve of this Act which the incorporators elect to set forth in articles of incorporation, or (c) that makes a shareholders' agreement in conformance with Part Twelve of this Act part of the articles of incorporation of a close corporation in the manner prescribed in Section F, Article 2.22 of this Act, but any such provision, other than the statement required by Section A, Article 12.11 of this Act, shall be preceded by a statement that the provision shall be subject to the corporation remaining a close corporation in conformance with Part Twelve of this Act;

(10) Any provision, not inconsistent with law, including any provision which under this Act is required or permitted to be set forth in the bylaws, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation;

(11) The street address of its initial registered office and the name of its initial registered agent at such address;

(12) The number of directors constituting the initial board of directors and the names and addresses of the person or persons who are to serve as directors until the first annual meeting of shareholders or until their successors be elected and qualify, or, in the case of a close corporation that, in conformance with Part Twelve of this Act, is to be managed in some other manner pursuant to a shareholders' agreement by the shareholders or by the persons empowered by the agreement to manage its business and affairs, the names and addresses of the person or persons who, pursuant to the shareholders' agreement, will perform the functions of the initial board of directors provided for by this Act;

(13) The name and address of each incorporator.

WTSC Corporations—8

B. It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this Act.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1957, 55th Leg., p. 111, ch. 54, § 5; Acts 1973, 63rd Leg., p. 1503, ch. 545, § 27, eff. Aug. 27, 1973; Acts 1975, 64th Leg., p. 315, ch. 134, § 12, eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 3114, ch. 818, § 5, eff. Aug. 31, 1981.]

Art. 3.03. Filing of Articles of Incorporation

A. The original and a copy of the articles of incorporation shall be delivered to the Secretary of State. If the Secretary of State finds that the articles of incorporation conform to law, he shall, when all fees have been paid as required by law:

(1) Endorse on the original and the copy the word "Filed," and the month, day, and year of the filing thereof.

(2) File the original in his office.

(3) Issue a certificate of incorporation to which he shall affix the copy.

B. The certificate of incorporation, together with the copy of the articles of incorporation affixed thereto by the Secretary of State, shall be delivered to the incorporators or their representatives.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1979, 66th Leg., p. 224, ch. 120, § 28, eff. May 9, 1979.]

Art. 3.04. Effect of Issuance of Certificate of Incorporation

A. Upon the issuance of the certificate of incorporation, the corporate existence shall begin, and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this Act, except as against the State in a proceeding for involuntary dissolution.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

Art. 3.05. Requirement Before Commencing Business

A. A corporation shall not transact any business or incur any indebtedness, except such as shall be incidental to its organization or to obtaining subscriptions to or payment for its shares, until it has received for the issuance of shares consideration of the value of at least One Thousand Dollars (\$1,000.00), consisting of money, labor done, or property actually received.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1957, 55th Leg., p. 111, ch. 54, § 6.]

Art. 3.06. Organization Meeting of Directors

A. After the issuance of the certificate of incorporation, an organization meeting of the initial board of directors named in the articles of incorporation shall be held, either within or without this

State, at the call of a majority of the directors named in the articles of incorporation, for the purpose of adopting bylaws, electing officers, and transacting such other business as may come before the meeting. The directors calling the meeting shall give at least three (3) days notice thereof by mail to each director so named, stating the time and place of the meeting.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1973, 63rd Leg., p. 1504, ch. 545, § 28, eff. Aug. 27, 1973.]

PART FOUR

Art. 4.01. Right to Amend Articles of Incorporation

A. A corporation may amend its articles of incorporation, from time to time, in any and as many respects as may be desired, so long as its articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation 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.

B. In particular, and without limitation upon such general power of amendment, a corporation may amend its articles of incorporation, from time to time so as:

- (1) To change its corporate name.
- (2) To change its period of duration.
- (3) To change, enlarge, or diminish its corporate purposes.
- (4) To increase or decrease the aggregate number of shares of any class which the corporation has authority to issue.
- (5) To increase or decrease the par value of the authorized shares of any class having a par value, whether issued or unissued.
- (6) To exchange, classify, or reclassify all or any part of its shares, whether issued or unissued or to cancel all or any part of its outstanding shares.
- (7) To change the designation of all or any part of its shares, whether issued or unissued, and to change the preferences, limitations, and relative rights in respect of all or any part of its shares, whether issued or unissued.
- (8) To change shares having a par value, whether issued or unissued, into the same or a different number of shares without par value, and to change shares without par value, whether issued or unissued, into the same or a different number of shares having a par value.
- (9) To change the shares of any class, whether issued or unissued, and whether with or without par value, into a different number of shares of the same class or into the same or a different number of shares, either with or without par value, of other classes.
- (10) To create new classes of shares having rights and preferences either prior and superior or subordinate and inferior to the shares of any class then authorized, whether issued or unissued.
- (11) To cancel or otherwise affect the right of the holders of the shares of any class to receive dividends which have accrued but have not been declared.
- (12) To divide any preferred or special class of shares, whether issued or unissued, into series and fix and determine the designations of such series and the variations in the relative rights and preferences as between the shares of such series.
- (13) To authorize the board of directors to establish, out of authorized but unissued shares, series of any preferred or special class of shares and fix and determine the relative rights and preferences of the shares of any series so established.
- (14) To authorize the board of directors to fix and determine the relative rights and preferences of the authorized but unissued shares of series theretofore established in respect of which either the relative rights and preferences have not been fixed and determined or the relative rights and preferences theretofore fixed and determined are to be changed.
- (15) To revoke, diminish, or enlarge the authority of the board of directors to establish series out of authorized but unissued shares of any preferred or special class and fix and determine the relative rights and preferences of the shares of any series so established.
- (16) To limit, deny, or grant to shareholders of any class the preemptive right to acquire additional or treasury shares of the corporation, whether then or thereafter authorized.
- (17) To become a consuming-assets corporation as defined and governed by this Act.
- (18) To include any provisions required or permitted by this Act to be included in the articles of incorporation of a close corporation in conformance with Part Twelve of this Act in connection with an election to become a close corporation, or to delete any such provisions in connection with a termination of a corporation's status as a close corporation.
- (19) To restrict the transfer of its shares of any class or series, or the transfer of any other securities.

C. Repealed by Acts 1975, 64th Leg., p. 322, ch. 134, § 22, eff. Sept. 1, 1975.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1973, 63rd Leg., p. 1504, ch. 545, § 29, eff. Aug. 27, 1973; Acts 1975, 64th Leg., p. 316, ch. 134, §§ 14, 22, eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 3115, ch. 818, § 6, eff. Aug. 31, 1981.]

Art. 4.02. Procedure to Amend Articles of Incorporation

A. The articles of incorporation may be amended in the following manner:

(1) The board of directors shall adopt a resolution setting forth the proposed amendment and, if shares have been issued, directing that it be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting. If no shares have been issued, the amendment shall be adopted by resolution of the board of directors and the provisions for adoption by shareholders shall not apply. The resolution may incorporate the proposed amendment in restated articles of incorporation which contain a statement that except for the designated amendment the restated articles of incorporation correctly set forth without change the corresponding provisions of the articles of incorporation as heretofore amended, and that the restated articles of incorporation together with the designated amendment supersede the original articles of incorporation and all amendments thereto.

(2) Written or printed notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided in this Act for the giving of notice of meetings of shareholders. If the meeting be an annual meeting, the proposed amendment or such summary may be included in the notice of such annual meeting.

(3) At such meeting a vote of the shareholders entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of the holders of at least two-thirds of the outstanding shares entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the proposed amendment shall be adopted upon receiving the affirmative vote of the holders of at least two-thirds of the shares within each class of outstanding shares entitled to vote thereon as a class and of at least two-thirds of the total outstanding shares entitled to vote thereon.

B. Any number of amendments may be submitted to the shareholders, and voted upon by them, at one meeting.

C. Repealed by Acts 1973, 63rd Leg., p. 1507, ch. 545, § 32.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1967, 60th Leg., p. 1719, ch. 657, § 7, eff. June 17, 1967; Acts 1973, 63rd Leg., pp. 1505, 1507, ch. 545, §§ 30, 32, eff. Aug. 27, 1973.]

Art. 4.03. Class Voting on Amendments

A. The holders of the outstanding shares of any class entitled to vote upon a proposed amendment by the provisions of the articles of incorporation shall be entitled to vote as a class thereon if the amendment would change the shares of any class having a par value into the same or a different number of shares without par value, or would change the shares of any class without par value into the same or a different number of shares having a par value, or would change the shares of any class, whether with or without par value, into a different number of shares of the same class.

B. The holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles of incorporation, if the amendment would:

(1) Increase or decrease the aggregate number of authorized shares of such class.

(2) Increase or decrease the par value of the shares of such class.

(3) Effect an exchange, reclassification, or cancellation of all or part of the shares of such class.

(4) Effect an exchange, or create a right of exchange, of all or any part of the shares of another class into the shares of such class.

(5) Change the designations, preferences, limitations, or relative rights of the shares of such class.

(6) Change the shares of such class, whether with or without par value, into the same or a different number of shares, either with or without par value, of the same class or another class or classes.

(7) Create a new class of shares having rights and preferences equal, prior, or superior to the shares of such class, or increase the rights and preferences of any class having rights and preferences equal, prior, or superior to the shares of such class, or increase the rights and preferences of any class having rights or preferences later or inferior to the shares of such class in such a manner as to become equal, prior, or superior to the shares of such class.

(8) In case of a preferred or special class of shares, divide the shares of such class into series and fix and determine the designation of such series and the variations in the relative rights and preferences between the shares of such series.

(9) Limit or deny the existing preemptive rights of the shares of such class.

(10) Cancel or otherwise affect dividends on the shares of such class which had accrued but had not been declared.

(11) Include in or delete from the articles of incorporation any provisions required or permitted to be included in the articles of incorporation of a close corporation in conformance with Part Twelve of this Act.

C. Repealed by Acts 1973, 63rd Leg., p. 1507, ch. 545, § 32.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1967, 60th Leg., p. 1753, ch. 663, § 1, eff. June 17, 1967; Acts 1973, 63rd Leg., p. 1506, ch. 545, §§ 31, 32, eff. Aug. 27, 1973; Acts 1975, 64th Leg., p. 318, ch. 134, § 15, eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 3117, ch. 818, § 7, eff. Aug. 31, 1981.]

Art. 4.04. Articles of Amendment

A. The articles of amendment shall be executed by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such articles. If no shares have been issued, however, and the articles of amendment are adopted by the board of directors, the articles of amendment may be executed by a majority of the directors and verified by them.

B. The articles of amendment shall set forth:

(1) The name of the corporation.

(2) If the amendment alters any provision of the original or amended articles of incorporation, an identification by reference or description of the altered provision and a statement of its text as it is amended to read. If the amendment is an addition to the original or amended articles of incorporation, a statement of that fact and the full text of each provision added.

(3) The date of the adoption of the amendment by the shareholders, or by the board of directors where no shares have been issued.

(4) The number of shares outstanding, and the number of shares entitled to vote on the amendment, and if the shares of any class are entitled to vote thereon as a class, the designation and number of outstanding shares entitled to vote thereon of each such class.

(5) The number of shares voted for and against the amendment, respectively, and, if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against the amendment, respectively, or if no shares have been issued a statement to that effect.

(6) If the amendment provides for an exchange, reclassification or cancellation of issued shares, and if the manner in which the same shall be effected is

not set forth in the amendment, then a statement of the manner in which the same shall be effected.

(7) If the amendment effects a change in the amount of stated capital, then a statement of the manner in which the same is effected and a statement, expressed in dollars, of the amount of stated capital as changed by the amendment.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1967, 60th Leg., p. 1719, ch. 657, § 8, eff. June 17, 1967; Acts 1973, 63rd Leg., p. 1507, ch. 545, §§ 33, 34, eff. Aug. 27, 1973; Acts 1979, 66th Leg., p. 224, ch. 120, § 29, eff. May 9, 1979; Acts 1981, 67th Leg., p. 839, ch. 297, § 15, eff. Aug. 31, 1981.]

Art. 4.05. Filing of Articles of Amendment

A. The original and a copy of the articles of amendment shall be delivered to the Secretary of State. If the Secretary of State finds that the articles of amendment conform to law, he shall, when the appropriate filing fee is paid as required by law:

(1) Endorse on the original and the copy the word "Filed" and the month, day, and year of the filing thereof.

(2) File the original in his office.

(3) Issue a certificate of amendment to which he shall affix the copy.

B. The certificate of amendment, together with the copy of the articles of amendment affixed thereto by the Secretary of State, shall be delivered to the corporation or its representative.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1979, 66th Leg., p. 225, ch. 120, § 30, eff. May 9, 1979; Acts 1981, 67th Leg., p. 840, ch. 297, § 16, eff. Aug. 31, 1981.]

Art. 4.06. Effect of Certificate of Amendment

A. Upon the issuance of the certificate of amendment by the Secretary of State, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

B. No amendment shall affect any existing cause of action in favor of or against such corporation, or any pending suit to which such corporation shall be a party, or the existing rights of persons other than shareholders; and, in the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate for that reason.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

Art. 4.07. Restated Articles of Incorporation

A. A corporation may, by following the procedure to amend the articles of incorporation provided by this Act (except that no shareholder approval shall be required where no amendment is made),

authorize, execute, and file restated articles of incorporation which may restate either:

(1) The entire text of the articles of incorporation as amended or supplemented by all certificates of amendment previously issued by the Secretary of State; or

(2) The entire text of the articles of incorporation as amended or supplemented by all certificates of amendment previously issued by the Secretary of State, and as further amended by such restated articles of incorporation.

B. If the restated articles of incorporation restate the entire articles of incorporation as amended and supplemented by all certificates of amendments previously issued by the Secretary of State, without making any further amendment thereof, the introductory paragraph shall contain a statement that the instrument accurately copies the articles of incorporation and all amendments thereto that are in effect to date and that the instrument contains no change in any provision thereof; provided that the number of directors then constituting the board of directors and the names and addresses of the persons then serving as directors may be inserted in lieu of similar information concerning the initial board of directors, and the name and address of each incorporator may be omitted.

C. If the restated articles of incorporation restate the entire articles of incorporation as amended and supplemented by all certificates of amendments previously issued by the Secretary of State, and as further amended by such restated articles of incorporation, the instrument containing such articles shall:

(1) Set forth, for any amendment made by such restated articles of incorporation, a statement that each such amendment has been effected in conformity with the provisions of this Act, and shall further set forth the statements required by this Act to be contained in articles of amendment.

(2) Contains a statement that the instrument accurately copies the articles of incorporation and all amendments thereto that are in effect to date and as further amended by such restated articles of incorporation and that the instrument contains no other change in any provision thereof; provided that the number of directors then constituting the board of directors and the names and addresses of the persons then serving as directors may be inserted in lieu of similar information concerning the initial board of directors, and the names and addresses of each incorporator may be omitted.

(3) Restate the text of the entire articles of incorporation as amended and supplemented by all certificates of amendment previously issued by the Secretary of State and as further amended by the restated articles of incorporation.

D. Such restated articles of incorporation shall be executed by the corporation by its president or a vice president and by its secretary or an assistant secretary, and shall be verified by one of the officers signing such articles. The original and a copy of the restated articles of incorporation shall be delivered to the Secretary of State. If the Secretary of State finds that the restated articles of incorporation conform to law, he shall, when the appropriate filing fee is paid as required by law:

(1) Endorse on the original and the copy the word "Filed," and the month, day, and year of the filing thereof.

(2) File the original in his office.

(3) Issue a restated certificate of incorporation to which he shall affix the copy.

E. The restated certificate of incorporation, together with the copy of the restated articles of incorporation affixed thereto by the Secretary of State, shall be delivered to the corporation or its representative.

F. Upon the issuance of the restated certificate of incorporation by the Secretary of State, the original articles of incorporation and all amendments thereto shall be superseded and the restated articles of incorporation shall be deemed to be the articles of incorporation of the corporation.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1957, 55th Leg., p. 111, ch. 54, § 7; Acts 1973, 63rd Leg., p. 1507, ch. 545, § 35, eff. Aug. 27, 1973; Acts 1979, 66th Leg., p. 225, ch. 120, § 31, eff. May 9, 1979; Acts 1981, 67th Leg., p. 840, ch. 297, § 17, eff. Aug. 31, 1981.]

Art. 4.08. Procedure for Redemption

A. A corporation may at any time, subject to the provisions of the articles of incorporation, proceed, by resolution of its board of directors, to redeem any or all outstanding shares subject to redemption. If less than all such shares are to be redeemed, the shares to be redeemed shall be selected for redemption in accordance with the provisions in the articles of incorporation, or, in the absence of such provisions therein, may be selected ratably or by lot in such manner as may be prescribed by resolution of the board of directors. Such redemption shall be effected by call and written or printed notice in the following manner:

(1) The notice of redemption of such shares shall set forth:

(a) The class or series of shares or part of any class or series of shares to be redeemed.

(b) The date fixed for redemption.

(c) The redemptive price.

(d) The place at which the shareholders may obtain payment of the redemptive price and, in the case of holders of certificated shares, upon surrender of their respective share certificates.

(2) The notice shall be given to each holder of redeemable shares being called, either personally or by mail, not less than twenty (20) nor more than fifty (50) days before the date fixed for redemption. 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 stock transfer book of the corporation, with postage thereon prepaid.

B. A corporation may, on or prior to the date fixed for redemption of redeemable shares, deposit with any bank or trust company in this State, or any bank or trust company in the United States duly appointed and acting as transfer agent for such corporation, as a trust fund, a sum sufficient to redeem shares called for redemption, with irrevocable instructions and authority to such bank or trust company to give or complete the notice of redemption thereof and to pay, on or after the date fixed for such redemption, to the respective holders of shares, as evidenced by a list of holders of such shares certified by the corporation by its president or a vice president and by its secretary or an assistant secretary, the redemptive price upon the surrender of their respective share certificates. Thereafter, from and after the date fixed for redemption, such shares shall be deemed to be redeemed and dividends thereon shall cease to accrue after such date fixed for redemption. Such deposit shall be deemed to constitute full payment of such shares to their holders. Thereafter, such shares shall no longer be deemed to be outstanding, and the holders thereof shall cease to be shareholders with respect to such shares, and shall have no rights with respect thereto except the right to receive from the bank or trust company payment of the redemptive price of such shares without interest and, in the case of holders of certificated shares, upon the surrender of their respective certificates therefor, and any right to convert such shares which may exist. In case the holders of such shares shall not, within six (6) years after such deposit, claim the amount deposited for redemption thereof, such bank or trust company shall upon demand pay over to the corporation the balance of such amount so deposited to be held in trust and such bank or trust company shall thereupon be relieved of all responsibility to the holders thereof.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1983, 68th Leg., p. 2567, ch. 442, § 6, eff. Sept. 1, 1983.]

Art. 4.09. Restrictions on Redemption or Purchase of Redeemable Shares

A. Irrespective of any provisions in the articles of incorporation of a corporation respecting the purchase or redemption of redeemable shares, shares shall be redeemable only if they have a liquidation preference, and no redemption or purchase of redeemable shares shall be made by a corporation:

(1) At a price exceeding the redemptive price thereof.

(2) When there is a reasonable ground for believing that such redemption or purchase will render the corporation unable to satisfy its debts and liabilities when they fall due.

(3) Which would reduce the net assets below the aggregate amount payable to the holders of shares having prior or equal rights to the assets of the corporation upon voluntary dissolution.

(4) Which would involve paying any shareholder more than the stated capital represented by the shares redeemed, unless the excess shall be paid out of a surplus of the corporation.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1975, 64th Leg., p. 318, ch. 134, § 16, eff. Sept. 1, 1975.]

Art. 4.10. Reduction of Stated Capital by Redemption or Purchase of Redeemable Shares

A. When redeemable shares of a corporation are redeemed or purchased by the corporation, the redemption or purchase shall effect a cancellation of such shares, and a statement of cancellation shall be filed as provided in this Article. Thereupon such shares shall be restored to the status of authorized but unissued shares, unless the articles of incorporation provide that such shares when redeemed or purchased shall not be reissued, in which case the filing of the statement of cancellation shall operate as an amendment to the articles of incorporation and shall reduce the number of shares of the class so cancelled which the corporation is authorized to issue by the number of shares so cancelled. If the shares so redeemed and purchased constitute all the outstanding shares of any particular class of shares and if the articles of incorporation provide that the shares of such class when redeemed and repurchased shall not be reissued, the filing of the statement of cancellation shall operate as an amendment to the articles of incorporation by eliminating therefrom all reference to such class of shares and shall reduce the classes of shares which the corporation is authorized to issue accordingly.

B. The statement of cancellation shall be executed by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, and shall set forth:

(1) The name of the corporation.

(2) The number of redeemable shares cancelled through the redemption or purchase, itemized by classes and series.

(3) The aggregate number of issued shares, itemized by classes and series, after giving effect to such cancellation.

(4) The amount, expressed in dollars, of the stated capital of the corporation after giving effect to such cancellation.

(5) If the articles of incorporation provide that the cancelled shares shall not be reissued, then the number of shares which the corporation has authority to issue, itemized by classes and series, after giving effect to such cancellation.

C. The original and a copy of such statement shall be delivered to the Secretary of State. If the Secretary of State finds that such statement conforms to law, he shall, when the appropriate filing fee is paid as required by law:

(1) Endorse on the original and the copy the word "Filed," and the month, day, and year of the filing thereof.

(2) File the original in his office.

(3) Return the copy to the corporation or its representative.

D. The filing of the statement of cancellation shall effect a reduction of the stated capital of the corporation by an amount equal to that part of the stated capital which was, at the time of the cancellation, represented by the shares so cancelled.

E. Nothing contained in this Article shall be construed to forbid a cancellation of shares or a reduction of stated capital in any other manner permitted by law.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1979, 66th Leg., p. 226, ch. 120, § 32, eff. May 9, 1979; Acts 1981, 67th Leg., p. 840, ch. 297, § 18, eff. Aug. 31, 1981.]

Art. 4.11. Cancellation of Treasury Shares

A. A corporation may, at any time, by resolution of its board of directors, cancel all or any part of its treasury shares, and in such event a statement of cancellation shall be filed as provided in this Article.

B. The statement of cancellation shall be executed by the corporation by its president or a vice president and by its secretary or an assistant secretary, shall be verified by one of the officers signing such statement, and shall set forth:

(1) The name of the corporation.

(2) A statement that a resolution has been duly adopted by the board of directors authorizing the cancellation, the date of adoption of such resolution, and a summary of its contents, including a statement of the number of treasury shares to be cancelled, itemized by classes and series, and the amount of stated capital represented by the shares to be cancelled.

(3) The aggregate number of shares, itemized by classes and series and par value, if any, which are to retain the status of issued shares after the cancellation becomes effective.

(4) The amount, expressed in dollars, which is to constitute the stated capital of the corporation after the cancellation becomes effective.

C. The original and a copy of such statement shall be delivered to the Secretary of State. If the Secretary of State finds that such statement conforms to law, he shall, when the appropriate filing fee is paid as required by law:

(1) Endorse on the original and the copy the word "Filed," and the month, day, and year of the filing thereof.

(2) File the original in his office.

(3) Return the copy to the corporation or its representative.

D. Upon the filing of such statement of cancellation, the stated capital of the corporation shall be deemed to be reduced by that part of the stated capital which was, at the time of such cancellation, represented by the shares so cancelled, and the shares so cancelled shall be restored to the status of authorized but unissued shares.

E. Nothing contained in this Article shall be construed to forbid a cancellation of shares or a reduction of stated capital in any other manner permitted by law.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1979, 66th Leg., p. 226, ch. 120, § 33, eff. May 9, 1979; Acts 1981, 67th Leg., p. 840, ch. 297, § 19, eff. Aug. 31, 1981.]

Art. 4.12. Reduction of Stated Capital Without Amendment of Articles and Without Cancellation of Shares

A. If all or part of the stated capital of a corporation is represented by shares without par value, the stated capital of the corporation may be reduced in the following manner:

(1) The board of directors shall adopt a resolution setting forth the amount of the proposed reduction and the manner in which the reduction shall be effected, and directing that the question of such reduction be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) Written or printed notice, stating that the purpose or one of the purposes of such meeting is to consider the question of reducing the stated capital of the corporation in the amount and manner proposed by the board of directors, shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided in this Act for the giving of notice of meetings of shareholders.

(3) At the meeting for which such notice has been given, the affirmative vote of the holders of at least a majority of the shares entitled to vote on the

question shall be required for approval of the resolution proposing the reduction of stated capital.

B. When a reduction of the stated capital of a corporation has been approved as provided in this Article, a statement shall be executed by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, and shall set forth:

- (1) The name of the corporation.
- (2) A copy of the resolution of the shareholders approving such reduction, and the date of its adoption.
- (3) The number of shares outstanding, and the number of shares entitled to vote on the resolution.
- (4) The number of shares voted for and against such reduction, respectively.
- (5) A statement of the manner in which such reduction is effected, and a statement, expressed in dollars, of the amount of stated capital of the corporation after giving effect to such reduction.

C. The original and a copy of such statement shall be delivered to the Secretary of State. If the Secretary of State finds that such statement conforms to law, he shall, when the appropriate filing fee is paid as required by law:

- (1) Endorse on the original and the copy the word "Filed," and the month, day, and year of the filing thereof.
- (2) File the original in his office.
- (3) Return the copy to the Corporation or its representative.

D. Upon the filing of such statement, the stated capital of the corporation shall be reduced as therein set forth.

E. No reduction of stated capital shall be made under the provisions of this Article which would reduce the amount of the aggregate stated capital of the corporation to an amount equal to or less than the aggregate preferential amounts payable upon all issued shares having a preferential right in the assets of the corporation in the event of voluntary liquidation, plus the aggregate par value of all issued shares having a par value but no preferential right in the assets of the corporation in the event of voluntary liquidation.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1975, 64th Leg., p. 319, ch. 134, § 17, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 227, ch. 120, § 34, eff. May 9, 1979; Acts 1981, 67th Leg., p. 841, ch. 297, § 20, eff. Aug. 31, 1981.]

Art. 4.13. Special Provisions Relating to Surplus and Reserves

A. The surplus created by any reduction of the stated capital of a corporation, such reduction being

accomplished by any of the methods permitted by this Act, shall be deemed to be reduction surplus.

B. A corporation may, by resolution of the board of directors, apply any part or all of its capital surplus or reduction surplus to the reduction or elimination of any deficit arising from losses, however incurred, but only after first eliminating the earned surplus, if any, of the corporation by applying such losses against earned surplus and only to the extent that such losses exceed the earned surplus, if any. Each such application of capital surplus or reduction surplus shall, to the extent thereof, effect a reduction of such surplus.

C. A corporation may, by resolution of its board of directors, create a reserve or reserves out of its earned surplus for any proper purpose or purposes, and may abolish any such reserve in the same manner. Earned surplus of the corporation to the extent so reserved shall not be available for the payment of dividends or other distributions by the corporation except as expressly permitted by law.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

Art. 4.14. Amendment of Articles of Incorporation in Reorganization Proceedings

A. Whenever a plan of reorganization of a corporation has been confirmed by decree of order of a court of competent jurisdiction in proceedings for the reorganization of such corporation, pursuant to the provisions of any applicable statute of the United States relating to reorganizations of corporations, the articles of incorporation of the corporation may be amended, in the manner provided in this Article, in as many respects as may be necessary to carry out the plan and put it into effect, so long as the articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making such amendment.

B. In particular, and without limitation upon such general power of amendment, the articles of incorporation may be amended for such purpose so as to:

- (1) Change the corporate name, period of duration, or corporate purposes of the corporation.
- (2) Repeal, alter, or amend the bylaws of the corporation.
- (3) Change the aggregate number of shares, or shares of any class, which the corporation has authority to issue.
- (4) Change the preferences, limitations, and relative rights in respect of all or any part of the shares of the corporation, and classify, reclassify, or cancel all or any part thereof, whether issued or unissued.

(5) Authorize the issuance of bonds, debentures, or other obligations of the corporation, whether or not convertible into shares of any class or bearing

warrants or other evidences of optional rights to purchase or subscribe for shares of any class, and fix the terms and conditions thereof.

(6) Constitute or reconstitute and classify or reclassify the board of directors and officers in place of or in addition to all or any of the directors or officers then in office.

C. Amendments to the articles of incorporation pursuant to this Article shall be made in the following manner:

(1) Articles of amendment approved by decree or order of such court shall be executed and verified by such person or persons as the court shall designate or appoint for the purpose, and shall set forth the name of the corporation, the amendments of the articles of incorporation approved by the court, the date of the decree or order approving the articles of amendment, the title of the proceedings in which the decree or order was entered, and a statement that such decree or order was entered by a court having jurisdiction of the proceedings for the reorganization of the corporation pursuant to the provisions of an applicable statute of the United States.

(2) The original and a copy of the articles of amendment shall be delivered to the Secretary of State. If the Secretary of State finds that the articles of amendment conform to law, he shall, when the appropriate filing fee is paid as prescribed by law:

(a) Endorse on the original and the copy the word "Filed," and the month, day, and year of the filing thereof.

(b) File the original in his office.

(c) Issue a certificate of amendment to which he shall affix the copy.

(3) The certificate of amendment, together with the copy of the articles of amendment affixed thereto by the Secretary of State, shall be returned to the corporation or its representative.

D. Upon the issuance of the certificate of amendment by the Secretary of State, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly, without any action thereon by the directors or shareholders of the corporation and with the same effect as if the amendments had been adopted by unanimous action of the directors and shareholders of the corporation.

[Acts 1961, 57th Leg., p. 424, ch. 206, § 3. Amended by Acts 1979, 66th Leg., p. 227, ch. 120, § 35, eff. May 9, 1979; Acts 1981, 67th Leg., p. 841, ch. 297, § 21, eff. Aug. 31, 1981.]

PART FIVE

Art. 5.01. Procedure for Merger of Domestic Corporations

A. Any two or more domestic corporations may merge into one of such corporations pursuant to a

plan of merger approved in the manner provided in this Act.

B. The board of directors of each corporation shall, by resolution adopted by each such board, approve a plan of merger setting forth:

(1) The names of the corporations proposing to merge.

(2) The name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation.

(3) The terms and conditions of the proposed merger.

(4) The manner and basis of exchanging or converting the shares of each merging corporation for, or into, cash, property, shares, rights, other securities or obligations of the surviving corporation, and, if any shares of either merging corporation are not to be exchanged or converted solely for, or into, cash, property, shares, rights, other securities or obligations of the surviving corporation, the cash, property, shares, rights, other securities or obligations of any corporation other than the surviving corporation which the holders of such shares are to receive in exchange for, or upon conversion of, such shares and, in the case of shares represented by certificates, upon the surrender of such certificates, which cash, property, shares, rights, other securities or obligations of any corporation other than the surviving corporation may be in addition to or in lieu of cash, property, shares, rights, other securities or obligations of the surviving corporation.

(5) A statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger.

(6) Such other provisions with respect to the proposed merger as are deemed necessary or desirable.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1971, 62nd Leg., p. 1173, ch. 276, § 2, eff. May 19, 1971; Acts 1983, 68th Leg., p. 1714, ch. 326, § 1, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 2569, ch. 442, § 7, eff. Sept. 1, 1983.]

Art. 5.02. Procedure for Consolidation of Domestic Corporations

A. Any two or more domestic corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in this Act.

B. The board of directors of each corporation shall, by a resolution adopted by each such board, approve a plan of consolidation setting forth:

(1) The names of the corporations proposing to consolidate.

(2) The name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation.

(3) The terms and conditions of the proposed consolidation.

(4) The manner and basis of converting the shares of each corporation into shares, rights, other securities or obligations of the new corporation, and, if any shares of either corporation are not to be converted solely into shares, rights, other securities or obligations of the new corporation, the cash, property, shares, rights, other securities or obligations of any other corporation which the holders of such shares are to receive in exchange for, or upon conversion of, such shares and, in the case of shares represented by certificates, upon the surrender of such certificates, which cash, property, shares, rights, other securities or obligations of any other corporation may be in addition to or in lieu of shares, rights, other securities or obligations of the new corporation.

(5) With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this Act.

(6) Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1971, 62nd Leg., p. 1173, ch. 276, § 3, eff. May 19, 1971; Acts 1983, 68th Leg., p. 2570, ch. 442, § 8, eff. Sept. 1, 1983.]

Art. 5.03. Approval by Shareholders of Merger or Consolidation of Domestic Corporations

A. The board of directors of each domestic corporation, upon approving a plan of merger or plan of consolidation, shall, by resolution, direct that the plan be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting. Written or printed notice shall be given to each shareholder of record entitled to vote at such meeting, not less than twenty (20) days before such meeting, in the manner provided in this Act for the giving of notice of meetings of shareholders, and shall state the purpose of the meeting whether the meeting be an annual or a special meeting. A copy or a summary of the plan of merger or plan of consolidation, as the case may be, shall be included in or enclosed with such notice.

B. At each such meeting, a vote of the shareholders shall be taken on the proposed plan of merger or consolidation. Each outstanding share of each such corporation shall be entitled to vote on the proposed plan of merger or consolidation, whether or not such share has voting rights under the provisions of the articles of incorporation of such corporation. The plan of merger or consolidation shall be approved upon receiving the affirmative vote of the holders of at least two-thirds of the outstanding shares of each such corporation, unless

any class of shares of any such corporation is entitled to vote as a class thereon, in which event, as to such corporation, the plan of merger or consolidation shall be approved upon receiving the affirmative vote of the holders of at least two-thirds of the outstanding shares within each class of shares entitled to vote as a class thereon as well as of at least two-thirds of the outstanding shares. Any class of shares of any such corporation shall be entitled to vote as a class if the plan of merger or consolidation, as the case may be, contains any provision which, if contained in a proposed amendment to articles of incorporation, would entitle such class of shares to vote as a class.

C. After such approval by vote of the shareholders of each corporation, and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of the merger or consolidation.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1967, 60th Leg., p. 1720, ch. 657, § 9, eff. June 17, 1967.]

Art. 5.04. Articles of Merger or Consolidation of Domestic Corporations

A. Upon the required approval by the shareholders of two or more corporations of a plan of merger or consolidation, articles of merger or articles of consolidation shall be executed by each corporation by its president or a vice president and by its secretary or an assistant secretary, verified by one of the officers of each corporation signing such articles, and shall set forth:

(1) The plan of merger or the plan of consolidation.

(2) As to each corporation, the number of shares outstanding, and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class.

(3) As to each corporation, the number of shares voted for and against such plan, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against such plan, respectively.

B. The original and a copy of the articles of merger or articles of consolidation shall be delivered to the Secretary of State. If the Secretary of State finds that such articles conform to law, he shall, when all fees and franchise taxes have been paid as required by law:

(1) Endorse on the original and the copy the word "Filed," and the month, day and year of the filing thereof.

(2) File the original in his office.

(3) Issue a certificate of merger or a certificate of consolidation to which he shall affix the copy.

C. The certificate of merger or certificate of consolidation, together with the copy of the articles of merger or articles of consolidation affixed thereto by the Secretary of State, shall be delivered to the surviving or new corporation, as the case may be, or its representative.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1979, 66th Leg., p. 228, ch. 120, § 36, eff. May 9, 1979.]

Art. 5.05. Effective Date of Merger or Consolidation of Domestic Corporations

A. Upon the issuance of the certificate of merger or the certificate of consolidation by the Secretary of State, the merger or consolidation of domestic corporations shall be effected.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

Art. 5.06. Effect of Merger or Consolidation of Domestic Corporations

A. When such merger or consolidation of domestic corporations has been effected:

(1) The several corporations parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation.

(2) The separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease.

(3) Such surviving or new corporation shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a corporation organized under this Act.

(4) Such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, as well of a public as of a private nature, of each of the merging or consolidating corporations; and all property, real, personal, and mixed, and all debts due on whatever account, including subscriptions to shares, and all other choses in action, and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed.

(5) Such surviving or new corporation shall thenceforth be responsible and liable for all liabilities and obligations of each of the corporations so merged or consolidated; and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted as if such merger or consolidation had not taken place, or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporations shall be impaired by such merger or consolidation.

(6) In the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the plan of merger; and, in the case of a consolidation, the statements set forth in the articles of consolidation and which are required or are permitted to be set forth in the articles of incorporation of corporations organized under this Act shall be deemed to be the articles of incorporation of the new corporation.

(7) Repealed by Acts 1967, 60th Leg., p. 1729, ch. 657, § 19, eff. June 17, 1967.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1967, 60th Leg., p. 1729, ch. 657, § 19, eff. June 17, 1967.]

Art. 5.07. Merger or Consolidation of Domestic and Foreign Corporations

A. One or more foreign corporations and one or more domestic corporations may be merged or consolidated, if such merger or consolidation is permitted by the laws of the State under which each such foreign corporation is organized. In the case of merger, the surviving corporation may be any one of the constituent corporations and shall be deemed to continue to exist under the laws of the state of its incorporation. In the case of consolidation, the new corporation may be a corporation organized under the laws of any state under which any of the constituent corporations was organized.

B. Such merger or consolidation shall be carried out in the following manner:

(1) Each domestic corporation shall comply with the provisions of this Act with respect to merger or consolidation, as the case may be, of domestic corporations, except that if the surviving or new corporation is to be a foreign corporation, the plan of merger or consolidation shall specify the state under whose laws such surviving or new corporation is to be governed and the address, including street and number, if any, of the registered or principal office of such surviving or new corporation in the state under whose laws it is to be governed; provided that no domestic corporation shall be merged or consolidated with a foreign corporation unless and until a resolution authorizing such merger or consolidation shall be adopted upon the affirmative vote of the holders of at least two-thirds of the outstanding shares of the domestic corporation cast at a meeting called and conducted in the same manner as provided by Article 5.03 of this Act.

(2) If the surviving or new corporation, as the case may be, is a foreign corporation, it shall comply with the provisions of this Act with respect to foreign corporations if it is to transact business in this State, and in every case it shall file with the Secretary of State of this State:

(a) An agreement that it may be served with process in this State in any proceeding for the enforcement of any obligation of any domestic corporation which was a party to such merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such domestic corporation against the surviving or new corporation.

(b) An irrevocable appointment of the Secretary of State of this State as its agent to accept service of process in any such proceeding.

(c) An agreement that it will promptly pay to the dissenting shareholders of any domestic corporation the amount, if any, to which they shall be entitled under the provisions of this Act with respect to the rights of dissenting shareholders.

(3) Upon compliance by each domestic and foreign corporation which is a party to the merger or consolidation with the provisions of this Act with respect to merger or consolidation, and upon issuance by the Secretary of State of this State of the certificate of merger or the certificate of consolidation provided for in this Act, the merger or consolidation shall be effected in this State.

C. The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, if the surviving or new corporation is a domestic corporation. If the surviving or new corporation is a foreign corporation, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except in so far as the laws of such other state provide otherwise.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1967, 60th Leg., p. 1720, ch. 657, § 10, eff. June 17, 1967; Acts 1981, 67th Leg., p. 841, ch. 297, § 22, eff. Aug. 31, 1981.]

Art. 5.08. Conveyance by Corporation

A. Any corporation may convey land by deed, with or without the seal of the corporation, signed by the president or a vice president or attorney in fact of the corporation when authorized by appropriate resolution of the board of directors or shareholders. Such deed, when acknowledged by such officer or attorney in fact to be the act of the corporation, or proved in the manner prescribed for other conveyances of lands, may be recorded in like manner and with the same effect as other deeds. Any such deed when recorded, if signed by the president or any vice president of the corporation, shall constitute prima facie evidence that such resolution of the board of directors or shareholders was duly adopted.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

Art. 5.09. Disposition of Assets Authorized by Board of Directors

A. Except as otherwise provided in the articles of incorporation and except as provided in the next sentence of this section, the sale, lease, exchange or other disposition of all, or substantially all, the property and assets of a corporation, when made in the usual and regular course of the business of the corporation, may be made upon such terms and conditions and for such considerations, which may consist in whole or in part of money or property, real or personal, including shares of any other corporation, domestic or foreign, as shall be authorized by its board of directors, without authorization or consent of the shareholders. Except as otherwise provided in the articles of incorporation, the board of directors may authorize any pledge, mortgage, deed of trust or trust indenture and no authorization or consent of the shareholders shall be required for the validity thereof or for any sale pursuant to the terms thereof.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1957, 55th Leg., p. 111, ch. 54, § 8.]

Art. 5.10. Disposition of Assets Requiring Special Authorization of Shareholders

A. A sale, lease, exchange, or other disposition (not including any pledge, mortgage, deed of trust or trust indenture unless otherwise provided in the articles of incorporation) of all, or substantially all, the property and assets, with or without the good will of a corporation, if not made in the usual and regular course of its business, may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any corporation, domestic or foreign, as may be authorized in the following manner:

(1) The board of directors shall adopt a resolution recommending such sale, lease, exchange, or other disposition and directing the submission thereof to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) Written or printed notice shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided for in this Act for the giving of notice of meetings of shareholders, and, whether the meeting be an annual or a special meeting shall state that the purpose, or one of the purposes, of such meeting is to consider the proposed sale, lease, exchange, or other disposition.

(3) At such meeting, the shareholders may authorize such sale, lease, exchange or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Each outstanding share of the corporation shall be entitled to vote thereon,

whether or not entitled to vote thereon by the provisions of the articles of incorporation. Such authorization shall require the affirmative vote of the holders of at least two-thirds of the outstanding shares of the corporation, and, in the event any class of shares is entitled to vote as a class thereon, such authorization shall require in addition of the affirmative vote of the holders of at least two-thirds of the outstanding shares of each class of shares entitled to vote as a class thereon.

(4) After such authorization by vote of shareholders, the board of directors, nevertheless, in its discretion, may abandon such sale, lease, exchange or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by shareholders.

B. A disposition of all, or substantially all, of the property and assets of a corporation requiring the special authorization of the shareholders of the corporation under Section A of this article:

(1) is not considered to be a merger or consolidation pursuant to this Act or otherwise; and

(2) except as otherwise expressly provided by another statute, does not make the acquiring corporation responsible or liable for any liability or obligation of the selling corporation that the acquiring corporation did not expressly assume.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1957, 55th Leg., p. 111, ch. 54, § 9; Acts 1967, 60th Leg., p. 1720, ch. 657, § 11, eff. June 17, 1967; Acts 1979, 66th Leg., p. 422, ch. 194, § 1, eff. May 17, 1979.]

Art. 5.11. Rights of Dissenting Shareholders in the Event of Certain Corporate Actions

A. Any shareholder of a domestic corporation shall have the right to dissent from any of the following actions:

(1) Any plan of merger or consolidation to which the corporation is a party;

(2) Any sale, lease, exchange or other disposition (not including any pledge, mortgage, deed of trust or trust indenture unless otherwise provided in the articles of incorporation) of all, or substantially all, the property and assets, with or without good will, of a corporation requiring the special authorization of the shareholders as provided by this Act.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1957, 55th Leg., p. 111, ch. 54, § 10; Acts 1973, 63rd Leg., p. 1508, ch. 545, § 36, eff. Aug. 27, 1973.]

Art. 5.12. Procedure for Dissent by Shareholders as to Said Corporate Actions

A. In case any shareholder of any domestic corporation lawfully elects to exercise his right to dissent from any of the corporate actions referred to in the last preceding Article hereof, the following procedure shall be followed:

(1) Such shareholder shall file with the corporation, prior to the taking of the vote of shareholders on the proposed corporate action, a written objection to such proposed corporate action, setting out that his right to dissent will be exercised if such action is effective and giving his address, to which notice thereof shall be delivered or mailed in such event. If such corporate action be effected and such shareholder shall not have voted in favor thereof, the corporation shall, within ten (10) days after such corporate action is effected deliver or mail to such shareholder written notice thereof, and such shareholder may, within ten (10) days from the delivery or mailing of such notice, make written demand on the existing, surviving, or new corporation, as the case may be, domestic or foreign, for payment of the fair value of his shares. The fair value of such shares shall be the value thereof as of the day before the vote was taken authorizing such corporate action, excluding any appreciation or depreciation in anticipation of such proposed act. Such demand shall state the number and class of the shares owned by the dissenting shareholder and the fair value of such shares as estimated by him. Any shareholder failing to make demand within the ten (10) day period shall be bound by such corporate action.

(2) Within twenty (20) days after receipt by the existing, surviving, or new corporation, as the case may be, of a demand for payment of the fair value of his shares made by such dissenting shareholder in accordance with Subsection (1) hereof, such corporation shall deliver or mail to such dissenting shareholder a written notice which shall either set out that the corporation accepts the amount claimed in such demand and agrees to pay such amount within ninety (90) days after the date on which such corporate action was effected, and, in the case of shares represented by certificates, upon the surrender of such certificates duly endorsed, or shall contain an estimate by the corporation of the fair value of such shares, together with an offer to pay the amount of such estimate within ninety (90) days after the date on which such corporate action was effected, upon receipt of notice within sixty (60) days after such date from such shareholder that he agrees to accept such amount upon the surrender of such certificates duly endorsed.

(3) If, within sixty (60) days after the date on which such corporate action was effected the value of such shares is agreed upon between the dissenting shareholder and the existing, surviving, or new corporation, as the case may be, payment therefor shall be made within ninety (90) days after the date on which such corporate action was effected and, in the case of shares represented by certificates, upon surrender of such certificate or certificates. Upon payment of the agreed value, the dissenting shareholder shall cease to have any interest in such shares or in the corporation.

B. If, within such period of sixty (60) days after the date on which such corporate action was effected, the shareholder and the existing, surviving, or new corporation, as the case may be, do not so agree, then the dissenting shareholder or the corporation may, within sixty (60) days after the expiration of the sixty (60) day period, file a petition in any court of competent jurisdiction in the county in which the principal office of the corporation is located, asking for a finding and determination of the fair value of such shares. Upon the filing of any such petition by a shareholder, service of a copy thereof shall be made upon the corporation, which shall, within ten (10) days after such service, file in the office of the clerk of the court in which such petition was filed a duly verified list containing the names and addresses of all shareholders who have demanded payment for their shares and with whom agreements as to the value of their shares have not been reached by the corporation. If the petition shall be filed by the corporation, the petition shall be accompanied by such a duly verified list. The clerk of the court shall give notice of the time and place fixed for the hearing of such petition by registered mail to the corporation and to the shareholders shown upon such list at the addresses therein stated. The forms of the notices by mail shall be approved by the court. All shareholders thus notified and the corporation shall thereafter be bound by the final judgment of the court.

C. After the hearing of such petition, the court shall determine the shareholders who have complied with the provisions of this Article and have become entitled to the valuation of and payment for their shares, and shall appoint one or more qualified appraisers to determine such value. Such appraisers shall have power to examine any of the books and records of the corporation the shares of which they are charged with the duty of valuing, and they shall make a determination of the fair value of the shares upon such investigation as to them may seem proper. The appraisers shall also afford a reasonable opportunity to the parties interested to submit to them pertinent evidence as to the value of the shares. The appraisers shall also have such power and authority as may be conferred on Masters in Chancery by the Rules of Civil Procedure or by the order of their appointment.

D. The appraisers shall determine the fair value of the shares of the shareholders adjudged by the court to be entitled to payment therefor and shall file their report respecting such value in the office of the clerk of the court, and notice of the filing of such report shall be given by the clerk to the parties in interest. Such report shall be subject to exceptions to be heard before the court both upon the law and the facts. The court shall by its judgment determine the fair value of the shares of the shareholders entitled to payment therefor and shall direct the payment of such value by the existing, surviv-

ing, or new corporation, together with interest thereon, to the date of such judgment, to the shareholders entitled thereto. The judgment shall be payable to the holders of uncertificated shares immediately but to the holders of shares represented by certificates only upon, and simultaneously with, the surrender to the existing, surviving, or new corporation, as the case may be, of such certificate or certificates. Upon payment of the judgment, the dissenting shareholders shall cease to have any interest in such shares, or in the corporation. The court shall allow the appraisers a reasonable fee as court costs and all court costs shall be allotted between the parties in such manner as the court shall determine to be fair and equitable.

E. Shares acquired by the existing, surviving, or new corporation, as the case may be, pursuant to the payment of the agreed value thereof or to payment of the judgment entered therefor, as in this Article provided, may be held and disposed of by such corporation as in the case of other treasury shares.

F. The provisions of this Article shall not apply to a merger if, on the date of the filing of the articles of merger, the surviving corporation is the owner of all the outstanding shares of the other corporations, domestic or foreign, that are parties to the merger.

G. In the absence of fraud in the transaction, the remedy provided by this Article to a shareholder objecting to any corporate action referred to in Article 5.11 of this Act is the exclusive remedy for the recovery of the value of his shares or money damages to such shareholder with respect to such corporate action; and if the existing, surviving, or new corporation, as the case may be, complies with the requirements of this Article, any such shareholder who fails to comply with the requirements of this Article shall not be entitled to bring suit for the recovery of the value of his shares or money damages to such shareholder with respect to such corporate action.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1967, 60th Leg., p. 1721, ch. 657, § 12, eff. June 17, 1967; Acts 1983, 68th Leg., p. 2570, ch. 442, § 9, eff. Sept. 1, 1983.]

Art. 5.13. Provisions Affecting Remedies of Dissenting Shareholders

A. Any shareholder who has demanded payment for his shares in accordance with Article 5.12 shall not thereafter be entitled to vote or exercise any other rights of a shareholder except the right to receive payment for his shares pursuant to the provisions of said Article 5.12 and the right to maintain an appropriate action to obtain relief on the ground that the corporate action would be or was fraudulent, and the respective shares for which payment has been demanded shall not thereafter be

considered outstanding for the purposes of any subsequent vote of shareholders.

B. Upon receiving a demand for payment from any dissenting shareholder, the corporation shall make an appropriate notation thereof in its shareholder records. Within twenty (20) days after demanding payment for his shares in accordance with Article 5.12, each holder of certificates representing shares so demanding payment shall submit such certificates to the corporation for notation thereon that such demand has been made. The failure of holders of certificated shares to do so shall, at the option of the corporation, terminate such shareholder's rights under Article 5.12 unless a court of competent jurisdiction for good and sufficient cause shown shall otherwise direct. If uncertificated shares for which payment has been demanded or shares represented by a certificate on which notation has been so made shall be transferred, any new certificate issued therefor shall bear similar notation together with the name of the original dissenting holder of such shares and a transferee of such shares shall acquire by such transfer no rights in the corporation other than those which the original dissenting shareholder had after making demand for payment of the fair value thereof.

C. Any shareholder who has demanded payment for his shares in accordance with Article 5.12 may withdraw such demand at any time before payment for his shares or before any petition has been filed pursuant to Article 5.12 asking for a finding and determination of the fair value of such shares, but no such demand may be withdrawn after such payment has been made or, unless the corporation shall consent thereto, after any such petition has been filed. If, however, such demand shall be withdrawn as hereinbefore provided, or if pursuant to Section B of this Article the corporation shall terminate the shareholder's rights under Article 5.12, or if no petition asking for a finding and determination of fair value of such shares by a court shall have been filed within the time provided in Article 5.12, or if after the hearing of a petition filed pursuant to Article 5.12, the court shall determine that such shareholder is not entitled to the relief provided by Article 5.12, then, in any such case, such shareholder and all persons claiming under him shall be conclusively presumed to have approved and ratified the corporate action from which he dissented and shall be bound thereby, the right of such shareholder to be paid the fair value of his shares shall cease, and his status as a shareholder shall be restored without prejudice to any corporate proceedings which may have been taken during the interim, and such shareholder shall be entitled to receive any dividends or other distributions made to shareholders in the interim.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1967, 60th Leg., p. 1723, ch. 657, § 13, eff. June 17, 1967; Acts 1983, 68th Leg., p. 2573, ch. 442, § 10, eff. Sept. 1, 1983.]

Art. 5.14. Derivative Suits

Definitions

A. In this Article:

- (1) A "derivative suit" is a suit brought in the right of a domestic or foreign corporation.
- (2) "Expenses" are reasonable expenses, incurred in the defense of a derivative suit, including:
 - (a) Fees of attorneys, and
 - (b) Expenses for which a corporate defendant may be required to indemnify another defendant.

Prerequisites

B. A derivative suit may be brought in this State only if:

- (1) The plaintiff was a record or beneficial owner of shares, or of an interest in a voting trust for shares, at the time of the transaction of which he complains, or his shares or interest thereafter devolved upon him by operation of law from a person who was such an owner at that time, and
- (2) The initial pleading in the suit states:
 - (a) The ownership required by Subsection (1), and
 - (b) With particularity, the efforts of the plaintiff to have suit brought for the corporation by the board of directors, or the reasons for not making any such efforts.

Security for Expenses

C. The court having jurisdiction in a derivative suit may, in its discretion, require the plaintiff or plaintiffs to give security for the expenses incurred or expected to be incurred by one or more of the defendants. The court may, in its discretion, at any time increase or decrease the amount of the security on a showing that the security provided is then inadequate or excessive.

Inability to Give Security

D. If plaintiff is unable to give security, he may file an affidavit in accordance with the Texas Rules of Civil Procedure, and those rules shall control.

Failure to Give Security

E. If plaintiff fails to give the security within a reasonable time set by the court, the court shall (except as provided in Section D of this Article) dismiss the suit without prejudice.

Judgment for Expenses

F. The court having jurisdiction in a derivative suit may, upon final judgment for one or more defendants and a finding that the suit was brought without reasonable cause against such defendants,

require the plaintiff to pay expenses to such defendants, whether or not security has been required.

[Acts 1965, 59th Leg., p. 698, ch. 332, § 1. Amended by Acts 1973, 63rd Leg., p. 1508, ch. 545, § 37, eff. Aug. 27, 1973.]

Art. 5.15. Antitrust Laws; Dissenting Stockholders; Savings Clause¹

Nothing contained in Part 5 of this Act shall ever be construed as affecting, nullifying or repealing the Anti-trust laws or as abridging any right or rights of a dissenting stockholder under existing laws.

[Formerly art. 5.14. Acts 1955, 54th Leg., p. 239, ch. 64, art. 5.14. Renumbered as art. 5.15 by Acts 1965, 59th Leg., p. 699, ch. 332, § 2.]

¹ Article heading editorially supplied.

Art. 5.16. Merger of Subsidiary or Subsidiaries into Parent Corporation

Qualifications

A. In any case in which at least ninety (90%) per cent of the outstanding shares of each class of a corporation or corporations is owned by another corporation, and one of such corporations is a domestic corporation and the other or others are domestic corporations or foreign corporations organized under the laws of a jurisdiction which permit such a merger, the corporation having such share ownership may merge such other corporation or corporations into itself by executing, verifying and filing articles of merger in accordance with Section B of this Article.

Execution of Articles; Contents

B. The articles of merger shall be executed by the parent corporation by its president or a vice-president and by its secretary or an assistant secretary, and verified by one of the officers signing such articles, and shall set forth:

(1) The name of the parent corporation, and the name or names of the subsidiary corporations and the respective jurisdiction under which each such corporation is organized.

(2) The number of outstanding shares of each class of each subsidiary corporation and the number of such shares of each class owned by the parent corporation.

(3) A copy of the resolution adopted by the board of directors of the parent corporation to so merge and the date of the adoption thereof. If the parent corporation does not own all the outstanding shares of each class of each subsidiary corporation party to the merger, the resolution shall state the terms and conditions of the merger, including the securities, cash or other property to be used, paid or delivered by the surviving corporation upon surrender of each

share of the subsidiary corporation or corporations not owned by the parent corporation.

(4) If the surviving corporation is a foreign corporation, the address, including street number if any, of its registered or principal office in the jurisdiction under whose laws it is governed. It shall comply also with the provisions of Article 5.07B(3) of this Act.

Delivery to Secretary of State; Duties

C. The original and a copy of the articles of merger shall be delivered to the Secretary of State. If the Secretary of State finds that such articles conform to law, he shall, when all fees and franchise taxes have been paid as required by law:

(1) Endorse on the original and the copy the word "Filed," and the month, day and year of the filing thereof.

(2) File the original in his office.

(3) Issue a certificate of merger to which he shall affix the copy and deliver them to the surviving corporation or its representative.

Effective Date and Effect

D. The effective date and the effect of such merger shall be the same as provided in Articles 5.05 and 5.06 of this Act if the surviving corporation is a domestic corporation. If the surviving corporation is a foreign corporation, the effective date and the effect of such merger shall be the same as in the case of the merger of domestic corporations except in so far as the laws of such other jurisdiction provide otherwise.

Remedy of Minority Shareholders

E. In the event all of the shares of a subsidiary domestic corporation party to a merger effected under this Article are not owned by the parent corporation immediately prior to the merger, the surviving corporation shall, within ten (10) days after the effective date of the merger, mail to each shareholder of record of such subsidiary domestic corporation a copy of the articles of merger and notify him that the merger has become effective. In case any such shareholder elects to demand payment for his shares, the following procedure shall be followed:

(1) Such shareholder shall within twenty (20) days after the mailing of the notice and copy of the articles of merger make written demand on the surviving corporation, domestic or foreign, for payment of the fair value of his shares. The fair value of such shares shall be the value thereof as of the day before the effective date of the merger, excluding any appreciation or depreciation in anticipation of such proposed act. Such demand shall state the number and class of the shares owned by the dissenting shareholder and the fair value of such

shares as estimated by him. Any shareholder failing to make demand within the twenty (20) day period shall be bound by such corporate action.

(2) Within ten (10) days after receipt by the surviving corporation of a demand for payment of the fair value of his shares made by such dissenting shareholder in accordance with Subsection (1) hereof, such corporation shall deliver or mail to such dissenting shareholder a written notice which shall either set out that the corporation accepts the amount claimed in such demand and agrees to pay such amount within ninety (90) days after the date on which such corporate action was effected and, in the case of shares represented by certificates, upon the surrender of such certificates duly endorsed, or shall contain an estimate by the corporation of the fair value of such shares, together with an offer to pay the amount of such estimate within ninety (90) days after the date on which such corporation action was effected, upon receipt of notice within sixty (60) days after such date from such shareholder that he agrees to accept such amount and, in the case of shares represented by certificates, upon the surrender of such certificates duly endorsed.

(3) If, within sixty (60) days after the date on which such corporate action was effected the value of such shares is agreed upon between the dissenting shareholder and the surviving corporation, payment therefor shall be made within ninety (90) days after the date on which such corporate action was effected and, in the case of shares represented by certificates, upon surrender of such certificate or certificates. Upon payment of the agreed value, the dissenting shareholder shall cease to have any interest in such shares or in the corporation.

(4) If, within such period of sixty (60) days after the date on which such corporate action was effected, the shareholder and the surviving corporation do not so agree, then the dissenting shareholder or the corporation may, within sixty (60) days after the expiration of the sixty (60) day period, file a petition in any court of competent jurisdiction in the county in which the principal office of the corporation is located, asking for a finding and determination of the fair value of such shares as provided in Section B of Article 5.12 of this Act and thereupon the parties shall have the rights and duties and follow the procedure set forth in Sections B to D inclusive of Article 5.12 and set forth in Article 5.13.

(5) In the absence of fraud in the transaction, the remedy provided by this Article to a shareholder objecting to such corporate action is the exclusive remedy for the recovery of the value of his shares or money damages to such shareholder with respect to such corporate action; and if the surviving corporation complies with the requirements of this Article, any such shareholder who fails to comply with the requirements of this Article shall not be entitled to bring suit for the recovery of the value of his

shares or money damages to such shareholder with respect to such corporate action.

Exemption From Other Articles

F. Except as otherwise provided in this Article, the provisions of Articles 5.11, 5.12 and 5.13 of this Act shall not be applicable to a merger effected under the provisions of this Article.

[Acts 1969, 61st Leg., p. 844, ch. 280, § 1, eff. May 22, 1969. Amended by Acts 1979, 66th Leg., p. 228, ch. 120, § 37, eff. May 9, 1979; Acts 1979, 66th Leg., p. 423, ch. 194, § 2, eff. May 17, 1979; Acts 1983, 68th Leg., p. 2573, ch. 442, § 11, eff. Sept. 1, 1983.]

PART SIX

Art. 6.01. Voluntary Dissolution by Incorporators or Directors

A. A corporation which has not commenced business and which has not issued any shares, may be voluntarily dissolved by its incorporators or its directors at any time in the following manner:

(1) Articles of dissolution shall be executed by a majority of the incorporators or directors, and verified by them, and shall set forth:

- (a) The name of the corporation.
- (b) The date of issuance of its certificate of incorporation.
- (c) That none of its shares has been issued.
- (d) That the corporation has not commenced business.
- (e) That the amount, if any, actually paid on subscriptions for its shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto.
- (f) That no debts of the corporation remain unpaid.
- (g) That a majority of the incorporators or directors elect that the corporation be dissolved.

(2) The original and a copy of the articles of dissolution shall be delivered to the Secretary of State, along with a certificate from the Comptroller of Public Accounts that all franchise taxes have been paid. If the Secretary of State finds that the articles of dissolution conform to law, he shall, when the appropriate filing fee is paid as required by law:

- (a) Endorse on the original and the copy the word "Filed," and the month, day, and year of the filing thereof.
- (b) File the original in his office.
- (c) Issue a certificate of dissolution, to which he shall affix the copy.
- (3) The certificate of dissolution, together with the copy of the articles of dissolution affixed there-

to by the Secretary of State, shall be delivered to the incorporators, the directors, or their representatives. Upon the issuance of such certificate of dissolution by the Secretary of State, the existence of the corporation shall cease.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1967, 60th Leg., p. 1724, ch. 657, § 14, eff. June 17, 1967; Acts 1973, 63rd Leg., p. 1509, ch. 545, § 38, eff. Aug. 27, 1973; Acts 1975, 64th Leg., p. 319, ch. 134, § 18, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 229, ch. 120, § 38, eff. May 9, 1979; Acts 1981, 67th Leg., p. 842, ch. 297, § 23, eff. Aug. 31, 1981.]

Art. 6.02. Voluntary Dissolution by Consent of Shareholders

A. A corporation may be voluntarily dissolved by the written consent of all of its shareholders.

B. Upon the execution of such written consent and after compliance with other provisions of this Act, the corporation shall file articles of dissolution as provided in this Act.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1967, 60th Leg., p. 1724, ch. 657, § 14, eff. June 17, 1967.]

Art. 6.03. Voluntary Dissolution by Act of Corporation

A. A corporation may be dissolved by the act of the corporation when authorized in the following manner:

(1) The board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of such dissolution be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) Written or printed notice shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in this Act for the giving of notice of meetings of shareholders, and, whether the meeting be an annual or special meeting, shall state that the purpose, or one of the purposes, of such meeting is to consider the advisability of dissolving the corporation.

(3) At such meeting a vote of shareholders entitled to vote thereat shall be taken on a resolution to dissolve the corporation. Each outstanding share of the corporation shall be entitled to vote thereon, whether or not entitled to vote thereon by the provisions of the articles of incorporation. Such resolution shall be adopted upon receiving the affirmative vote of the holders of at least two-thirds of the outstanding shares of the corporation, unless any class of shares is entitled to vote as a class thereon, in which event the resolution shall require for its adoption the affirmative vote of the holders of at least two-thirds of the outstanding shares of each class of shares entitled to vote as a class thereon, as well as the affirmative vote of two-thirds of the total outstanding shares.

B. Upon the adoption of such resolution and after compliance with other provisions of this Act, the corporation shall file articles of dissolution as provided in this Act.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1967, 60th Leg., p. 1725, ch. 657, § 14, eff. June 17, 1967.]

Art. 6.04. Procedure Before Filing Articles of Dissolution

A. Before filing articles of dissolution:

(1) The corporation shall cease to carry on its business, except insofar as may be necessary for the winding up thereof.

(2) The corporation shall cause written notice by registered mail of its intention to dissolve to be mailed to each known creditor of and claimant against the corporation.

(3) The corporation shall proceed to collect its assets, convey and dispose of such of its properties as are not to be distributed in kind to its shareholders, pay, satisfy, or discharge its liabilities and obligations, or make adequate provision for payment and discharge thereof, and do all other acts required to liquidate its business and affairs; in case its property and assets are not sufficient to satisfy or discharge all the corporation's liabilities and obligations, the corporation shall apply them so far as they will go to the just and equitable payment of the liabilities and obligations. After paying or discharging all its obligations, or making adequate provision for payment and discharge thereof, the corporation shall then distribute the remainder of its assets, either in cash or in kind, among its shareholders according to their respective rights and interests.

(4) The corporation, at any time during the liquidation of its business and affairs, may make application to any district court of this State in the county in which the registered office of the corporation is situated to have the liquidation continued under the supervision of such court as provided in this Act.

[Acts 1967, 60th Leg., p. 1725, ch. 657, § 14, eff. June 17, 1967.]

Art. 6.05. Revocation of Voluntary Dissolution Proceedings

A. At any time prior to the issuance of a certificate of dissolution by the Secretary of State, a corporation may revoke voluntary dissolution proceedings:

(1) By the written consent of all of its shareholders.

(2) By the act of the corporation in the following manner:

(a) The board of directors shall adopt a resolution recommending that the question of such revocation

be submitted to a vote at a special meeting of shareholders.

(b) Written or printed notice, stating that the purpose or one of the purposes of such meeting is to consider the advisability of revoking the voluntary dissolution proceedings, shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in this Act for the giving of notice of special meetings of shareholders.

(c) At such meeting a vote of the shareholders entitled to vote thereat shall be taken on a resolution to revoke the voluntary dissolution proceedings. Each outstanding share of the corporation shall be entitled to vote thereon, whether or not entitled to vote thereon by the provisions of the articles of incorporation. Such resolution shall be adopted upon receiving the affirmative vote of the holders of at least two-thirds of the outstanding shares of the corporation, unless any class of shares is entitled to vote thereon as a class, in which event the resolution shall require for its adoption the affirmative vote of the holders of at least two-thirds of the outstanding shares of each class of shares entitled to vote as a class thereon, as well as two-thirds of the total outstanding shares.

B. Upon the revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of the corporation, the corporation may again carry on its business.

[Acts 1967, 60th Leg., p. 1726, ch. 657, § 14, eff. June 17, 1967.]

Art. 6.06. Articles of Dissolution

A. If voluntary dissolution proceedings have not been revoked, then, when all liabilities and obligations of the corporation have been paid or discharged, or adequate provision has been made therefor, or in case its property and assets are not sufficient to satisfy and discharge all the corporation's liabilities and obligations, then when all the property and assets have been applied so far as they will go to the just and equitable payment of the corporation's liabilities and obligations, and all of the remaining property and assets of the corporation have been distributed to its shareholders according to their respective rights and interest, articles of dissolution shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:

- (1) The name of the corporation.
- (2) The names and respective addresses of its officers.
- (3) The names and respective addresses of its directors.

(4) That all debts, obligations and liabilities of the corporation have been paid or discharged or that adequate provision has been made therefor, or, in case the corporation's property and assets were not sufficient to satisfy and discharge all its liabilities and obligations, that all property and assets have been applied so far as they would go to the payment thereof in a just and equitable manner and that no property or assets remained available for distribution among its shareholders.

(5) That all the remaining property and assets of the corporation have been distributed among its shareholders in accordance with their respective rights and interests or that no property remained for distribution to shareholders after applying it as far as it would go to the just and equitable payment of the liabilities and obligations of the corporation.

(6) That there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit.

(7) If the corporation elected to dissolve by written consent of all shareholders:

(a) A copy of the written consent to dissolve, and a statement that such written consent has been signed by all shareholders of the corporation or signed in their names by their attorneys thereunto duly authorized.

(8) If the corporation elected to dissolve by act of the corporation:

(a) A copy of the resolution to dissolve, and a statement that such resolution was adopted by the shareholders of the corporation and the date of the adoption thereof.

(b) The number of shares outstanding, and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class.

(c) The number of shares voted for and against such resolution respectively and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against the resolution respectively.

[Acts 1967, 60th Leg., p. 1727, ch. 657, § 14, eff. June 17, 1967. Amended by Acts 1979, 66th Leg., p. 229, ch. 120, § 39, eff. May 9, 1979.]

Art. 6.07. Filing Articles of Dissolution

A. The original and a copy of such articles of dissolution shall be delivered to the Secretary of State, along with a certificate from the Comptroller of Public Accounts that all franchise taxes have been paid. If the Secretary of State finds that such articles of dissolution conform to law, he shall, when the appropriate filing fee is paid as required by law:

(1) Endorse on the original and the copy the word "Filed," and the month, day, and year of the filing thereof.

(2) File the original in his office.

(3) Issue a certificate of dissolution to which he shall affix the copy.

B. The certificate of dissolution, together with the copy of the articles of dissolution affixed thereto by the Secretary of State, shall be delivered to the representative of the dissolved corporation. Upon the issuance of such certificate of dissolution the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action by shareholders, directors and officers as provided by the laws of this State.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1967, 60th Leg., p. 1727, ch. 657, § 14, eff. June 17, 1967; Acts 1979, 66th Leg., p. 230, ch. 120, § 40, eff. May 9, 1979; Acts 1981, 67th Leg., p. 843, ch. 297, § 24, eff. Aug. 31, 1981.]

Arts. 6.08 to 6.12. Omitted

Part 6 of the Texas Business Corporation Act, Acts 1955, 54th Leg., p. 239, ch. 64, consisting of articles 6.01 to 6.12 was amended by Acts 1967, 60th Leg., p. 1727, ch. 657, § 14 to consist of articles 6.01 to 6.07, as set out, ante.

PART SEVEN

Art. 7.01. Involuntary Dissolution

A. A corporation may be dissolved involuntarily by a decree of the district court of the county in which the registered office of the corporation is situated or of any district court in Travis County in an action filed by the Attorney General when it is established that it is in default in any of the following particulars:

(1) The corporation or its incorporators have failed to comply with a condition precedent to incorporation; or

(2) The original articles of incorporation or any amendments thereof were procured through fraud; or

(3) The corporation has continued to transact business beyond the scope of the purpose or purposes of the corporation as expressed in its articles of incorporation; or

(4) A misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation pursuant to this Act.

B. A corporation may be dissolved involuntarily by order of the Secretary of State when it is estab-

lished that it is in default in any of the following particulars:

(1) The corporation has failed to file any report within the time required by law, or has failed to pay any fees, franchise taxes or penalties prescribed by law when the same have become due and payable;

(2) The corporation has failed to maintain a registered agent in this state as required by law; or

(3) The corporation has failed to pay the filing fee for the corporation's articles of incorporation or the initial franchise tax deposit, or the fee or tax was paid by an instrument that was dishonored when presented by the state for payment.

C. (1) No corporation shall be involuntarily dissolved under Subsection (1) or (2) of Section B hereof unless the Secretary of State, or other state agency with which such report, fees, taxes, or penalties is required to be made, gives the corporation not less than 90 days notice of its neglect, delinquency, or omission by certified mail addressed to its registered office or to its principal place of business, or to the last known address of one of its officers or directors, or to any other known place of business of said corporation, and the corporation has failed prior to such involuntary dissolution to correct the neglect, omission or delinquency.

(2) When a corporation is involuntarily dissolved under Subsection (3) of Section B of this article, the Secretary of State shall give the corporation notice of the dissolution by regular mail addressed to its registered office, its principal place of business, the last known address of one of its officers or directors, or any other known place of business of the corporation.

D. Whenever a corporation has given cause for involuntary dissolution and has failed to correct the neglect, omission or delinquency as provided in Sections B and C, the Secretary of State shall thereupon dissolve the corporation by issuing a certificate of involuntary dissolution, which shall include the fact of such involuntary dissolution and the date and cause thereof. The original of such certificate shall be placed in his office and a copy thereof mailed to the corporation at its registered office, or to its principal place of business, or the last known address of one of its officers or directors, or to any other known place of business of said corporation. Upon the issuance of such certificate of involuntary dissolution, the existence of the corporation shall cease, except for purposes otherwise provided by law.

E. Any corporation dissolved by the Secretary of State under the provisions of Section B of this article may be reinstated by the Secretary of State at any time within a period of 12 months from the date of such dissolution, upon approval of an application for reinstatement signed by an officer or director of the dissolved corporation. Such applica-

tion shall be filed by the Secretary of State whenever it is established to his satisfaction that in fact there was no cause for the dissolution, or whenever the neglect, omission or delinquency resulting in dissolution has been corrected and payment of all fees, taxes, penalties and interest due thereon which accrued before the dissolution plus an amount equal to the total taxes from the date of dissolution to the date of reinstatement which would have been payable had the corporation not been dissolved. A reinstatement filing fee of \$50 shall accompany the application for reinstatement.

Reinstatement shall not be authorized if the corporate name is the same as or deceptively similar to a corporate name already on file or reserved or registered, unless the corporation being reinstated contemporaneously amends the articles of incorporation to change its name.

When the application for reinstatement is approved and filed by the Secretary of State, the corporate existence shall be deemed to have continued without interruption from the date of dissolution except the reinstatement shall have no effect upon any issue of personal liability of the directors, officers, or agents of the corporation during the period between dissolution and reinstatement.

F. When a corporation is convicted of a felony or when a high managerial agent is convicted of a felony in the conduct of the affairs of the corporation, the Attorney General may file an action to involuntarily dissolve the corporation in a district court of the county in which the registered office of the corporation is situated or in a district court of Travis County. The court may dissolve the corporation involuntarily if it is established that:

(1) The corporation, or a high managerial agent acting in behalf of the corporation, has engaged in a persistent course of felonious conduct; and

(2) To prevent future felonious conduct of the same character, the public interest requires such dissolution.

G. Article 7.02 of this Act does not apply to Section F of this article.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1969, 61st Leg., p. 2484, ch. 835, § 3, eff. June 18, 1969; Acts 1973, 63rd Leg., p. 989, ch. 399, § 2(K), eff. Jan. 1, 1974; Acts 1981, 67th Leg., p. 843, ch. 297, § 25, eff. Aug. 31, 1981.]

Art. 7.02. Notification to Attorney General, Notice to Corporation and Opportunity of Corporation to Cure Default

A. The Secretary of State shall certify to the Attorney General, from time to time, the names of all corporations which have given cause for judicial dissolution of their charters or revocation of their certificates of authority as provided in this Act, together with the facts pertinent thereto. Every

such certificate from the Secretary of State to the Attorney General shall be taken and received in all courts as prima facie evidence of the facts therein stated.

B. Whenever the Secretary of State shall certify the name of any such corporation to the Attorney General as having given any cause for dissolution or revocation of its certificate of authority, the Secretary of State shall concurrently mail to such corporation at its registered office in this State a notice that such certification has been made and the grounds therefor. A record of the date of mailing such notice shall be kept in the office of the Secretary of State, and a certificate by the Secretary of State that such notice was mailed as indicated by such record shall be taken and received in all courts as prima facie evidence of the facts therein stated.

C. If at the expiration of thirty (30) days after the date of such mailing the corporation has not cured the defaults so certified by the Secretary of State, the Attorney General shall then file an action in the name of the State against such corporation for its dissolution or revocation of its certificate of authority, as the case may be.

D. If, after any such action is filed but before judgment is pronounced in the district court, the corporation against whom such action has been filed shall cure its default and pay the costs of such action, the action shall abate.

E. If, after the issues made in any such action have been heard by the court trying same and it is found that the corporate defendant has been guilty of any default of such nature as to justify its dissolution or revocation of its certificate of authority as provided in this Act, the court shall, without rendering or entering any judgment for a period of five (5) days pending the filing of an action upon a sworn application for stay of judgment as hereinafter provided, promptly pronounce its findings to such effect. If the corporation has proved by a preponderance of the evidence that the defaults of which the corporation has been found guilty were neither willful nor the result of failure to take reasonable precautions and has procured a finding to such effect it may promptly make sworn application to the court for a stay of entry of judgment in order to allow the corporation reasonable opportunity to cure the defaults of which it has been found guilty. If the court is reasonably satisfied on the basis of the corporation's sworn application and any evidence heard in support of or opposed to the application that the corporation is able and intends in good faith to cure the defaults of which it has been found guilty and that such stay is not applied for without just cause, the court shall grant such application and stay entry of judgment for such time as in the discretion of the court is reasonably necessary to afford the corporation opportunity to cure such defaults if it acts with reasonable dili-

gence, but in no event shall such stay be for more than sixty (60) days after the date of the pronouncement of the court's findings. If during such period of time as shall be allowed by the court the corporation shall cure its defaults and pay the costs of such action, the court shall then enter judgment dismissing the action. If the corporation does not satisfy the court that it has cured its default within said period of time, the court shall enter final judgment at the expiration thereof.

F. If the corporation does not make application for stay of such judgment but does appeal therefrom and the trial court's judgment is affirmed and if the appellate court is satisfied that the appeal was taken in good faith and not for purpose of delay or with no sufficient cause and further finds that the defaults of which the corporation has been adjudged guilty are capable of being cured, it shall, if the appealing corporation has so prayed, remand the case to the trial court with instructions to grant the corporation opportunity to cure such defaults, such cure to be accomplished within such time after issuance of the mandate as the appellate court shall determine but in no event more than sixty (60) days thereafter. If during such period of time as shall have been so allowed the corporation shall cure such defaults and pay all costs accrued in such action, the trial court shall then enter judgment dismissing such action. If the corporation does not satisfy the trial court that it has cured its defaults within such period of time, the judgment shall thereupon become final.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1969, 61st Leg., p. 2485, ch. 835, § 4, eff. June 18, 1969.]

Art. 7.03. Venue and Process

A. Every action for the involuntary dissolution of a domestic corporation or revocation of the certificate of authority of a foreign corporation shall be commenced by the Attorney General either in the district court of the county in which the registered office of the corporation in this State is situated, or in any district court of Travis County. Citation shall issue and be served as provided by law. If process is returned not found, the Attorney General shall cause publication to be made as in other civil cases in some newspaper published in the county where the registered office of the corporation in this State is situated, containing a notice of the pendency of such action, the title of the court, the title of the action, and the date on or after which default judgment may be entered. The Attorney General may include in one notice the name of any number of such corporations against which such actions are then pending in the same court. The Attorney General shall cause a copy of such notice to be mailed to the corporation at its registered office in this State within ten days after the first publication thereof. The certificate of the Attorney General of the mailing of such notice shall be prima

facie evidence thereof. Such notice shall be published at least once a week for two successive weeks, and the first publication thereof may begin at any time after the citation has been returned. Unless a corporation shall have been served with citation, no default judgment shall be taken against it earlier than thirty days after the first publication of such notice.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

Art. 7.04. Appointment of Receiver for Specific Corporate Assets

A. A receiver may be appointed by any court having jurisdiction of the subject matter for specific corporate assets located within the State, whether owned by a domestic or a foreign corporation, which are involved in litigation, whenever circumstances exist deemed by the court to require the appointment of a receiver to conserve such assets and to avoid damage to parties at interest, but only if all other requirements of law are complied with and if other remedies available either at law or in equity are determined by the court to be inadequate and only in the following instances:

(1) In an action by a vendor to vacate a fraudulent purchase of property; or by a creditor to subject any property or fund to his claim; or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff or any party whose right to or interest in the property or fund or the proceeds thereof is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured.

(2) In an action by a mortgagee for the foreclosure of his mortgage and sale of the mortgaged property, when it appears that the mortgaged property is in danger of being lost, removed, or materially injured, or that the condition of the mortgage has not been performed and that the property is probably insufficient to discharge the mortgage debt.

(3) In any other actions where receivers for specific assets have heretofore been appointed by the usages of the court of equity.

B. The court appointing such receiver shall have and retain exclusive jurisdiction over the specific assets placed in receivership and shall determine the rights of the parties in these assets or their proceeds.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

Art. 7.05. Appointment of Receiver to Rehabilitate Corporation

A. A receiver may be appointed for the assets and business of a corporation by the district court for the county in which the registered office of the corporation is located, whenever circumstances exist deemed by the court to require the appointment of a

receiver to conserve the assets and business of the corporation and to avoid damage to parties at interest, but only if all other requirements of law are complied with and if all other remedies available either at law or in equity, including the appointment of a receiver for specific assets of the corporation, are determined by the court to be inadequate, and only in the following instances:

(1) In an action by a shareholder when it is established:

(a) That the corporation is insolvent or in imminent danger of insolvency; or

(b) That the directors are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock, and that irreparable injury to the corporation is being suffered or is threatened by reason thereof; or

(c) That the acts of the directors or those in control of the corporation are illegal, oppressive or fraudulent; or

(d) That the corporate assets are being misapplied or wasted.

(e) That the shareholders are deadlocked in voting power, and have failed, for a period which includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon the election and qualification of their successors.

(2) In an action by a creditor when it is established:

(a) That the corporation is insolvent and the claim of the creditor has been reduced to judgment and an execution thereon returned unsatisfied; or

(b) That the corporation is insolvent and the corporation has admitted in writing that the claim of the creditor is due and owing.

(3) In any other actions where receivers have heretofore been appointed by the usages of the court of equity.

B. In the event that the condition of the corporation necessitating such an appointment of a receiver is remedied, the receivership shall be terminated forthwith and the management of the corporation shall be restored to the directors and officers, the receiver being directed to redeliver to the corporation all its remaining properties and assets.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1961, 57th Leg., p. 319, ch. 169, § 1.]

Section 2 of the Act 1961, 57th Leg., p. 319, ch. 169 provides: "The fact that the present law in this state authorizing the appointment of receivers where the shareholders of a corporation are deadlocked in voting power and are unable to elect directors is vague, uncertain and indefinite; and the fact that the foregoing amendment would correct such situation by bringing the Texas Business Corporation Act into conformity with the modern business corporation acts of other states as well as the Model Business Corporation Act promulgated by the Committee on Corporate Laws of the American Bar Association, upon which Model Business

Corporation Act, the Texas Business Corporation Act is largely patterned, creates an emergency and an imperative public necessity that the Constitutional Rule requiring that bills be read on three several days in each House be suspended, and said Rule is hereby suspended; and this Act shall take effect and be in force from and after its passage, and it is so enacted."

Art. 7.06. Jurisdiction of Court to Liquidate Assets and Business of Corporation and Receiverships Therefor

A. The district court for the county in which the registered office of a corporation is located may order the liquidation of the assets and business of the corporation and may appoint a receiver to effect such liquidation, whenever circumstances demand liquidation in order to avoid damage to parties at interest, but only if all other requirements of law are complied with and if all other remedies available either at law or in equity, including the appointment of a receiver of specific assets of the corporation and appointment of a receiver to rehabilitate the corporation, are determined by the court to be inadequate and only in the following instances:

(1) When an action has been filed by the Attorney General, as provided in this Act, to dissolve a corporation and it is established that liquidation of its business and affairs should precede the entry of a decree of dissolution.

(2) Upon application by a corporation to have its liquidation continued under the supervision of the court.

(3) If the corporation is in receivership and no plan for remedying the condition of the corporation requiring appointment of the receiver, which the court finds to be feasible, has been presented within twelve (12) months after the appointment of the receiver.

(4) Upon application of any creditor if it is established that irreparable damage will ensue to the unsecured creditors of the corporation, generally, as a class, unless there be an immediate liquidation of the assets of the corporation.

B. In the event the condition of the corporation necessitating the appointment of a receiver is remedied, the receivership shall be terminated forthwith and the management of the corporation shall be restored to the directors and officers, the receiver being directed to redeliver to the corporation all its remaining properties and assets.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1967, 60th Leg., p. 1727, ch. 657, § 15, eff. June 17, 1967.]

Art. 7.07. Qualifications, Powers, and Duties of Receivers; Other Provisions Relating to Receiverships

A. No receiver shall be appointed for any corporation to which this Act applies or for any of its assets or for its business except as provided for and on the conditions set forth in this Act. A receiver

shall in all cases be a citizen of the United States or a corporation authorized to act as receiver, which corporation may be a domestic corporation or a foreign corporation authorized to transact business in this State, and shall in all cases give such bond as the court may direct with such sureties as the court may require.

B. A receiver appointed by authority of this Act shall have authority to sue and be sued in all courts in his own name and shall have those powers and duties provided by laws of general applicability relating to receivers and in addition thereto may be accorded such other powers and duties as the court shall deem appropriate to accomplish the objectives for which the receiver was appointed. Such additional and unusual powers and duties shall be stated in the order appointing the receiver and may be increased or diminished at any time during the proceedings.

C. In proceedings involving any receivership of the assets or business of a corporation, the court may require all creditors of the corporation to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs of their respective claims under oath. If the court requires the filing of claims, it shall fix a date as the last day for the filing thereof, which shall be not less than four months from the date of the order, and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the court may extend the time for the filing of claims. Creditors and claimants failing to file proofs of claim on or before the date fixed therefor may be barred, by order of court (unless presenting to the court a justifiable excuse for delay in the filing), from participating in the distribution of the assets of the corporation; but no discharge shall be decreed or effected.

D. The court shall have power from time to time to make allowances to the receiver or receivers and to attorneys in the proceeding, and to direct the payment thereof out of the assets of the corporation within the scope of the receivership or the proceeds of any sale or disposition of such assets.

E. A court authorized to appoint a receiver for a corporation to which this Act applies, and no other court in this State, shall be authorized to appoint a receiver for the corporation or its assets and business; when such a court does appoint a receiver, as authorized by this Act, for the corporation or its assets and business, that court shall have exclusive jurisdiction of the corporation and all its properties, wherever situated.

F. Notwithstanding any provision of this Article or in this Act to the contrary, the district court for the county in which the registered office of any foreign corporation doing business in this State is located shall have jurisdiction to appoint an ancillary receiver for the assets and business of such

corporation, to serve ancillary to the receiver for the assets and business of the corporation acting under orders of a court having jurisdiction to appoint such a receiver for the corporation, located in any other state, whenever circumstances exist deemed by the court to require the appointment of such ancillary receiver. Moreover, such district court, whenever circumstances exist deemed by it to require the appointment of a receiver for all the assets in and out of this State, and the business, of a foreign corporation doing business in this State, in accordance with the ordinary usages of equity, may appoint such a receiver for all its assets in and out of this State, and its business, even though no receiver has been appointed elsewhere; such receivership shall be converted into an ancillary receivership when deemed appropriate by such district court in the light of orders entered by a court of competent jurisdiction in some other State, providing for a receivership of all assets and business of such corporation.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

Art. 7.08. Shareholders Not Necessary Parties Defendant to Receivership or Liquidation Proceedings

A. It shall not be necessary to make shareholders parties to any action or proceeding for a receivership or liquidation of the assets and business of a corporation unless relief is sought against them personally.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

Art. 7.09. Decree of Involuntary Dissolution

A. In proceedings to liquidate the assets and business of a corporation, when the costs and expenses of such proceedings and all debts, obligations, and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed to its shareholders, or, in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts, and obligations, when all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

Art. 7.10. Filing of Decree of Dissolution

A. In any case in which the court shall enter a decree dissolving a corporation, it shall be the duty of the clerk of such court to cause a certified copy of the decree to be filed with the Secretary of State. No fee shall be charged by the Secretary of State for the filing thereof.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

Art. 7.11. Deposit with State Treasurer of Amount Due Certain Shareholders and Creditors

A. Upon the voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to a creditor or shareholder who is unknown or cannot be found after the exercise of reasonable diligence by the person or persons responsible for the distribution in liquidation of the corporation's assets shall be reduced to cash and deposited with the State Treasurer, together with a statement giving the name of the person, if known, entitled to such fund, his last known address, the amount of his distributive portion, and such other information about such person as the State Treasurer may reasonably require, whereupon the person or persons responsible for the distribution in liquidation of the corporation's assets shall be released and discharged from any further liability with respect to the funds so deposited. The State Treasurer shall issue his receipt for such fund and shall deposit same in a special account to be maintained by him.

B. On receipt of satisfactory written and verified proof of ownership or of right to such fund within seven (7) years from the date such fund was so deposited, the State Treasurer shall certify such fact to the Comptroller of Public Accounts, who shall issue proper warrant therefor drawn on the State Treasurer in favor of the person or persons then entitled thereto. If no claimant has made satisfactory proof of right to such fund within seven (7) years from the time of such deposit the State Treasurer shall then cause to be published in one issue of a newspaper of general circulation in Travis County, Texas, a notice of the proposed escheat of such fund, giving the name of the creditor or shareholder apparently entitled thereto, his last known address, if any, the amount of the fund so deposited, and the name of the dissolved corporation from whose assets such fund was derived. If no claimant makes satisfactory proof of right to such fund within two months from the time of such publication, the fund so unclaimed shall thereupon automatically escheat to and become the property of the General Revenue Fund of the State of Texas.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

Art. 7.12. Survival of Remedy after Dissolution

A. The dissolution of a corporation either (1) by the issuance of a certificate of dissolution by the Secretary of State, or (2) by a decree of court when the court has not liquidated the assets and business of the corporation as provided in this Act, or (3) by expiration of its period of duration, shall not take away or impair any remedy available to or against such corporation, its officers, directors, or shareholders, for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within

three years after the date of such dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The shareholders, directors, and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right, or claim. If such corporation was dissolved by the expiration of its period of duration, such corporation may amend its articles of incorporation at any time during such period of three years so as to extend its period of duration.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

PART EIGHT

Art. 8.01. Admission of Foreign Corporation

A. No foreign corporation shall have the right to transact business in this State until it shall have procured a certificate of authority so to do from the Secretary of State. No foreign corporation shall be entitled to procure a certificate of authority under this Act to transact in this State any business which a corporation organized under this Act is not permitted to transact. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the State or country under which such corporation is organized governing its organization and internal affairs differ from the laws of this State, and nothing in this Act contained shall be construed to authorize this State to regulate the organization of such corporation, or its internal affairs not intrastate in Texas.

B. Without excluding other activities which may not constitute transacting business in this state, a foreign corporation shall not be considered to be transacting business in this state, for the purposes of this Act, by reason of carrying on in this state any one (1) or more of the following activities:

(1) Maintaining or defending any action or suit or any administrative or arbitration proceedings, or effecting the settlement thereof or the settlement of claims or disputes to which it is a party;

(2) Holding meetings of its directors or shareholders or carrying on other activities concerning its internal affairs;

(3) Maintaining bank accounts;

(4) Maintaining offices or agencies for the transfer, exchange, and registration of securities issued by it, or appointing and maintaining trustees or depositaries with relation to its securities;

(5) Voting the stock of any corporation which it has lawfully acquired;

(6) Effecting sales through independent contractors;

(7) Creating as borrower or lender, or acquiring, indebtedness or mortgages or other security interests in real or personal property.

(8) Securing or collecting debts due to it or enforcing any rights in property securing the same;

(9) Transacting any business in interstate commerce;

(10) Conducting an isolated transaction completed within a period of thirty (30) days and not in the course of a number of repeated transactions of like nature;

(11) Exercising the powers of executor or administrator of the estate of a non-resident decedent under ancillary letters issued by a court of this state, or exercising the powers of a trustee under the will of a non-resident decedent, or under a trust created by one or more non-residents of this state, or by one or more foreign corporations, if the exercise of such powers, in any such case, will not involve activities which would be deemed to constitute the transacting of business in this state in the case of a foreign corporation acting in its own right;

(12) Acquiring, in transactions outside Texas, or in interstate commerce, of debts secured by mortgages or liens on real or personal property in Texas, collecting or adjusting of principal and interest payments thereon, enforcing or adjusting any rights and property securing said debts, taking any actions necessary to preserve and protect the interest of the mortgagee in said security, or any combination of such transactions;

(13) Investing in or acquiring, in transactions outside of Texas, royalties and other non-operating mineral interests, and the execution of division orders, contracts of sale and other instruments incidental to the ownership of such non-operating mineral interests.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1957, 55th Leg., p. 111, ch. 54, § 11; Acts 1983, 68th Leg., p. 3157, ch. 540, § 10, eff. Aug. 29, 1983.]

Art. 8.02. Powers of Foreign Corporation

A. A foreign corporation which shall have received a certificate of authority under this Act shall, until its certificate of authority shall have been revoked in accordance with the provisions of this Act or until a certificate of withdrawal shall have been issued by the Secretary of State as provided in this Act, enjoy the same, but no greater, rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which such certificate of authority is issued; and, as to all matters affecting the transaction of intrastate business in this State, it and its officers and directors shall be subject to the same duties, restrictions, penalties, and liabilities now or hereafter im-

posed upon a domestic corporation of like character and its officers and directors.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1975, 64th Leg., p. 320, ch. 134, § 19, eff. Sept. 1, 1975.]

Art. 8.03. Corporate Name of Foreign Corporation

A. No certificate of authority shall be issued to a foreign corporation unless the corporate name of such corporation:

(1) Shall contain the word "corporation," "company," "incorporated," or "limited," or shall contain an abbreviation of one (1) of such words, or such corporation shall, for use in this state, add at the end of its name one (1) of such words or an abbreviation thereof.

(2) Shall not be the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this state or of any foreign corporation authorized to transact business in this state, or a name the exclusive right to which is, at the time, reserved or registered in the manner provided in this Act; provided that a name may be similar if written consent is obtained from the existing corporation having the name deemed to be similar or the person, or corporation, for whom the name deemed to be similar is reserved or registered in the office of the Secretary of State. A certificate of authority shall be issued as provided in this Act to any foreign corporation having a name the same as, deceptively similar to, or, if no consent is given, similar to the name of any domestic corporation existing under the laws of this state or of any foreign corporation authorized to transact business in this state, or a name the exclusive right to which is, at the time, reserved or registered in accordance with this Act, provided such foreign corporation qualifies and does business under a name that meets the requirements of this article. The foreign corporation shall set forth in the application for a certificate of authority the name under which it is qualifying and shall file an assumed name certificate in accordance with Chapter 36, Business & Commerce Code, as amended.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1961, 57th Leg., p. 423, ch. 206, § 4; Acts 1963, 58th Leg., p. 1310, ch. 500, § 1; Acts 1981, 67th Leg., p. 843, ch. 297, § 26, eff. Aug. 31, 1981.]

Art. 8.04. Change of Name by Foreign Corporation

A. Whenever a foreign corporation which is authorized to transact business in this State shall change its name to one under which a certificate of authority would not be granted to it on application therefor, the certificate of authority of such corporation shall be suspended and it shall not thereafter transact any business in this State until it has changed its name to a name which is available to it

under the laws of this State or has otherwise complied with the provisions of this Act.

[Acts 1973, 63rd Leg., p. 1509, ch. 545, § 39, eff. Aug. 27, 1973.]

Former article 8.04 was repealed by Acts 1967, 60th Leg., p. 1729, ch. 657, § 20, eff. June 17, 1967.

Art. 8.05. Application for Certificate of Authority

A. In order to procure a certificate of authority to transact business in this State, a foreign corporation shall make application therefor to the Secretary of State, which application shall set forth:

(1) The name of the corporation and the State or country under the laws of which it is incorporated.

(2) If the name of the corporation does not contain the word "corporation," "company," "incorporated," or "limited," and does not contain an abbreviation of one (1) of such words, then the name of the corporation with the word or abbreviation which it elects to add thereto for use in this State; if the corporation is required to qualify under a name other than its corporate name, then the name under which the corporation is to be qualified.

(3) The date of incorporation and the period of duration of the corporation.

(4) The address of the principal office of the corporation in the state or country under the laws of which it is incorporated.

(5) The address of the registered office of the corporation in this State, and the name of its registered agent in this State at such address.

(6) The purpose or purposes of the corporation which it proposes to pursue in the transaction of business in this State and a statement that it is authorized to pursue such purpose or purposes in the state or country under the laws of which it is incorporated.

(7) The names and respective addresses of the directors and officers of the corporation.

(8) A statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.

(9) A statement of the aggregate number of issued shares itemized by classes, par value of shares, shares without par value, and series, if any, within a class.

(10) A statement, expressed in dollars, of the amount of stated capital of the corporation, as defined in this Act.

(11) A statement that consideration of the value of at least One Thousand Dollars (\$1,000) has been paid for the issuance of shares.

B. Such application shall be made on forms promulgated by the Secretary of State and shall be

executed by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such application.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1973, 63rd Leg., p. 1510, ch. 545, § 40, eff. Aug. 27, 1973; Acts 1975, 64th Leg., p. 320, ch. 134, § 20, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 231, ch. 120, § 41, eff. May 9, 1979; Acts 1981, 67th Leg., p. 844, ch. 297, § 27, eff. Aug. 31, 1981.]

Art. 8.06. Filing of Application for Certificate of Authority

A. The original and a copy of the application of the corporation for a certificate of authority shall be delivered to the Secretary of State, together with a certificate issued by an authorized officer of the jurisdiction of the corporation's incorporation evidencing its corporate existence. If the certificate is in a language other than English, a translation of the certificate, under the oath of the translator, must be attached to the certificate. The certificate must be dated after the 91st day preceding the date on which the application is filed. If the Secretary of State finds that the application conforms to law, he shall, when the appropriate filing fee is paid as required by law:

(1) Endorse on the original and the copy the word "Filed," and the month, day, and year of the filing thereof.

(2) File in his office the original and the certificate evidencing corporate existence.

(3) Issue a certificate of authority to transact business in this State to which he shall affix the copy.

B. The certificate of authority, together with the copy of the application affixed thereto by the Secretary of State, shall be delivered to the corporation or its representative.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1973, 63rd Leg., p. 1510, ch. 545, § 41, eff. Aug. 27, 1973; Acts 1979, 66th Leg., p. 231, ch. 120, § 42, eff. May 9, 1979; Acts 1981, 67th Leg., p. 845, ch. 297, § 28, eff. Aug. 31, 1981.]

Art. 8.07. Effect of Certificate of Authority

A. Upon the issuance of a certificate of authority by the Secretary of State, the corporation shall be authorized to transact business in this State for those purposes set forth in its application, and such certificate shall be conclusive evidence of such right of the corporation to transact business in this State for such purposes, except as against this State in a proceeding to revoke such certificate.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1973, 63rd Leg., p. 1510, ch. 545, § 47, eff. Aug. 27, 1973.]

Art. 8.08. Registered Office and Registered Agent of Foreign Corporation

A. Each foreign corporation authorized to transact business in this State shall have and continuously maintain in this State:

(1) A registered office which may be, but need not be, the same as its place of business in this State.

(2) A registered agent, which agent may be either an individual resident in this State whose business office is identical with such registered office, or a domestic corporation, or a foreign corporation authorized to transact business in this State, having a business office identical with such registered office.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

Art. 8.09. Change of Registered Office or Registered Agent of Foreign Corporation

A. A foreign corporation authorized to transact business in this state may change its registered office or its registered agent, or both, upon filing in the office of the Secretary of State a statement setting forth:

(1) The name of the corporation.

(2) The post-office address of its then registered office.

(3) If the post-office address of its registered office is to be changed, the post-office address to which the registered office is to be changed.

(4) The name of its then registered agent.

(5) If its registered agent is to be changed, the name of its successor registered agent.

(6) That the post-office address of its registered office and the post-office address of the business office of its registered agent, as changed, will be identical.

(7) That such change was authorized by its Board of Directors or by an officer of the corporation so authorized by the Board of Directors.

B. Such statement shall be executed by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement. The original and a copy of such statement shall be delivered to the Secretary of State. If the Secretary of State finds that such statement conforms to the provisions of this Act, he shall, when all fees have been paid as required by law:

(1) Endorse on the original and the copy the word "Filed," and the month, day, and year of the filing thereof.

(2) File the original in his office.

(3) Return the copy to the corporation or its representative.

C. Upon the filing of such statement by the Secretary of State, the change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, shall become effective.

D. Any registered agent of a corporation may resign

(1) by giving written notice to the corporation at its last known address

(2) and by giving written notice, in duplicate (the original and one copy of the notice), to the Secretary of State within ten days after mailing or delivery of said notice to the corporation. Such notice shall include the last known address of the corporation and shall include the statement that written notice of resignation has been given to the corporation and the date thereof.

Upon compliance with the requirements as to written notice, the appointment of such agent shall terminate upon the expiration of thirty (30) days after receipt of such notice by the Secretary of State.

If the Secretary of State finds that such written notice conforms to the provisions of this Act, he shall:

(1) Endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof.

(2) File the original in his office.

(3) Return the copy to such resigning registered agent.

(4) Notify the corporation of the resignation of the registered agent.

No fee shall be required to be paid for the filing of a resignation under this section.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1969, 61st Leg., p. 2485, ch. 835, § 5, eff. June 18, 1969; Acts 1967, 60th Leg., p. 1728, ch. 657, § 16, eff. June 17, 1967; Acts 1969, 61st Leg., p. 2486, ch. 835, § 6, eff. June 18, 1969; Acts 1979, 66th Leg., p. 231, ch. 120, § 43, eff. May 9, 1979; Acts 1983, 68th Leg., p. 686, ch. 158, § 3, eff. May 20, 1983.]

Art. 8.10. Service of Process on Foreign Corporation

A. The president and all vice presidents of a foreign corporation authorized to transact business in this State and the registered agent so appointed by a foreign corporation shall be agents of such corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served.

B. Whenever a foreign corporation authorized to transact business in this State shall fail to appoint or maintain a registered agent in this State, or whenever any such registered agent cannot with

reasonable diligence be found at the registered office, or whenever the certificate of authority of a foreign corporation shall be revoked, then the Secretary of State shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the Secretary of State of any such process, notice, or demand shall be made by delivering to and leaving with him, or with the Assistant Secretary of State, or with any clerk having charge of the corporation department of his office, duplicate copies of such process, notice, or demand. In the event any such process, notice or demand is served on the Secretary of State, he shall immediately cause one of such copies thereof to be forwarded by registered mail, addressed to the corporation at its principal office in the state or country under the laws of which it is incorporated. Any service so had on the Secretary of State shall be returnable in not less than thirty days.

C. The Secretary of State shall keep a record of all processes, notices and demands served upon him under this Article, and shall record therein the time of such service and his action with reference thereto.

D. Nothing herein contained shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a foreign corporation in any other manner now or hereafter permitted by law.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1973, 63rd Leg., p. 124, ch. 63, § 1, eff. April 26, 1973.]

Arts. 8.11, 8.12. Repealed by Acts 1981, 67th Leg., p. 848, ch. 297, § 36, eff. Aug. 31, 1981

Art. 8.13. Amended Certificate of Authority

A. If a foreign corporation authorized to transact business in this State shall change its corporate name, or if such corporation desires to pursue in this State purposes other than, or in addition to, those authorized by its existing certificate of authority, it shall procure an amended certificate of authority by making application therefor to the Secretary of State.

B. To change any statement on an original application for a certificate of authority a foreign corporation shall file with the Secretary of State an application for an amended certificate of authority setting forth the change.

C. An application for an amended certificate of authority submitted because of a name change must be accompanied by a certificate from the proper filing officer in the jurisdiction of incorporation evidencing the name change.

D. The requirements in respect to the form and contents of such application, the manner of its execution, the filing of the application and a copy of it with the Secretary of State, the issuance of an amended certificate of authority and the effect

thereof, shall be the same as in the case of an original application for a certificate of authority.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1979, 66th Leg., p. 232, ch. 120, § 44, eff. May 9, 1979; Acts 1981, 67th Leg., p. 845, ch. 297, § 29, eff. Aug. 31, 1981.]

Art. 8.14. Withdrawal or Termination of Foreign Corporation

A. A foreign corporation authorized to transact business in this state may withdraw from this state upon procuring from the Secretary of State a certificate of withdrawal. In order to procure such certificate of withdrawal, such foreign corporation shall deliver to the Secretary of State an application for withdrawal, which shall set forth:

(1) The name of the corporation and the state or country under the laws of which it is incorporated;

(2) That the corporation is not transacting business in this state;

(3) That the corporation surrenders its authority to transact business in this state;

(4) That the corporation revokes the authority of its registered agent in this state to accept service of process and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in this state during the time the corporation was authorized to transact business in this state may thereafter be made on such corporation by service thereof on the Secretary of State;

(5) A post office address to which the Secretary of State may mail a copy of any process against the corporation that may be served on him;

(6) A statement that all sums due, or accrued, to this state have been paid, or that adequate provision has been made for the payment thereof;

(7) A statement that all known creditors or claimants have been paid or provided for and that the corporation is not involved in or threatened with litigation in any court in this state.

B. The application for withdrawal may be made on forms promulgated by the Secretary of State and shall be executed by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing the application.

C. When the existence of a foreign corporation terminates because of dissolution, merger, or otherwise, a certificate from the proper officer in the jurisdiction of the corporation's incorporation evidencing the termination shall be filed with the Secretary of State.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1957, 55th Leg., p. 111, ch. 54, § 12; Acts 1981, 67th Leg., p. 846, ch. 297, § 30, eff. Aug. 31, 1981.]

Art. 8.15. Filing of Application for Withdrawal

A. The original and a copy of such application for withdrawal shall be delivered to the Secretary of State. If the Secretary of State finds that such application conforms to the provisions of this Act, he shall, when all fees and franchise taxes have been paid as required by law:

(1) Endorse on the original and the copy the word "Filed," and the month, day, and year of the filing thereof.

(2) File the original in his office.

(3) Issue a certificate of withdrawal to which he shall affix the copy.

B. The certificate of withdrawal, together with the copy of the application for withdrawal affixed thereto by the Secretary of State, shall be delivered to the corporation or its representative. Upon the issuance of such certificate of withdrawal, the authority of the corporation to transact business in this State shall cease.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1979, 66th Leg., p. 232, ch. 120, § 45, eff. May 9, 1979.]

Art. 8.16. Revocation of Certificate of Authority

A. The certificate of authority of a foreign corporation to transact business in this state may be revoked by a decree of the district court for the county in which the registered office of the corporation in this state is situated or of any district court in Travis County in an action filed by the Attorney General when it is established that:

(1) The corporation has failed to comply with a condition precedent to the issuance of its certificate of authority or a renewal or amendment thereof; or

(2) The certificate of authority to transact business in this state or any amendment thereof was procured through fraud; or

(3) The corporation has continued to transact business beyond the scope of the purpose or purposes expressed in its certificate of authority to transact business in this state; or

(4) A misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation as required by law.

B. The certificate of authority of a foreign corporation to transact business in this state may be revoked by order of the Secretary of State when it is established that it is in default in any of the following particulars:

(1) The corporation has failed to file any report within the time required by law, or has failed to pay any fees, franchise taxes, or penalties prescribed by law when the same have become due any payable; or

(2) The corporation has failed to maintain a registered agent in this state as required by law; or

(3) The corporation has changed its corporate name and has failed to file with the Secretary of State within thirty days after such change of name became effective, an application for an amended certificate of authority, or that the corporation has changed its corporate name and that the newly adopted name is not available for use in this state; or

(4) The corporation has failed to pay the filing fee for the corporation's certificate of authority or the initial franchise tax deposit, or the fee or tax was paid by an instrument that was dishonored when presented by the state for payment.

C. (1) No foreign corporation shall have its certificate of authority to transact business in this state revoked under Subsection (1), (2), or (3) of Section B hereof unless the Secretary of State, or other state agency to which such report, taxes, fees, penalties is required to be made, gives the corporation not less than 90 days notice of its neglect, delinquency, or omission by certified mail addressed to its registered office or to its principal place of business, or to the last known address of one of its officers or directors, or to any other known place of business of said corporation, and the corporation has failed prior to such revocation to correct the neglect, omission or delinquency.

(2) When the certificate of authority of a foreign corporation to transact business in this state is revoked under Subsection (4) of Section B of this article, the Secretary of State shall give the corporation notice of the revocation by regular mail addressed to its registered office, its principal place of business, the last known address of one of its officers or directors, or any other known place of business of the corporation.

D. Whenever a corporation has given cause for revocation of its certificate of authority and has failed to correct the neglect, omission or delinquency as provided in Sections B and C, the Secretary of State shall thereupon revoke the certificate of authority of the corporation by issuing a certificate of revocation which shall include the fact of such revocation and the date and cause thereof. The original of such certificate shall be placed in his office and a copy thereof mailed to the corporation at its registered office or to its principal place of business, or to the last known address of one of its officers or directors, or to any other known place of business of said corporation. Upon the issuance of such certificate of revocation, the authority to transact business in this state shall cease.

E. Any corporation whose certificate of authority has been revoked by the Secretary of State under the provisions of Section B of this article may be reinstated by the Secretary of State at any time

within a period of 12 months from the date of dissolution, upon approval of an application for reinstatement signed by an officer or director of the corporation. Such application shall be filed by the Secretary of State whenever it is established to his satisfaction that in fact there was no cause for the revocation, or whenever the neglect, omission or delinquency resulting in revocation has been corrected and payment made of all fees, taxes, penalties and interest due thereon which accrued before the revocation plus an amount equal to the total taxes from the date of revocation to the date of reinstatement which would have been payable had the corporation's certificate not been revoked. A reinstatement filing fee of \$50 shall accompany the application for reinstatement.

Reinstatement shall not be authorized if the corporate name is the same as or deceptively similar to a corporate name already on file or reserved or registered, unless the corporation being reinstated contemporaneously amends its certificate of authority to change its name.

When the application for reinstatement is approved and filed by the Secretary of State, the corporate authority to do business in Texas shall be deemed to have continued without interruption from the date of revocation, except that reinstatement shall have no effect upon any issue of personal liability of the directors, officers, or agents of the corporation during the period between revocation and reinstatement.

F. When a foreign corporation is convicted of a felony, or when a high managerial agent is convicted of a felony committed in the conduct of the affairs of the foreign corporation, the Attorney General may file an action to revoke the certificate of authority of the foreign corporation to transact business in this State in a district court of the county in which the registered office of the foreign corporation in this State is situated or in a district court of Travis County. The court may revoke the foreign corporation's certificate of authority if it is established that:

(1) The foreign corporation, or a high managerial agent acting in behalf of the foreign corporation, has engaged in a persistent course of felonious conduct; and

(2) To prevent future felonious conduct of the same character, the public interest requires such revocation.

G. Article 7.02 of this Act does not apply to Section F of this article.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1969, 61st Leg., p. 2486, ch. 835, § 7, eff. June 18, 1969; Acts 1973, 63rd Leg., p. 989, ch. 399, § 2(L), eff. Jan. 1, 1974; Acts 1981, 67th Leg., p. 846, ch. 297, § 31, eff. Aug. 31, 1981.]

Art. 8.17. Filing of Decree of Revocation

A. In case the court shall enter a decree revoking the certificate of authority of a foreign corporation to transact business in this State, it shall be the duty of the clerk of such court to cause a certified copy of the decree to be filed with the Secretary of State. No fee shall be charged by the Secretary of State for the filing thereof.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

Art. 8.18. Transacting Business Without Certificate of Authority

A. No foreign corporation which is transacting, or has transacted, business in this State without a certificate of authority shall be permitted to maintain any action, suit, or proceeding in any court of this State (whether brought directly by the corporation or in the form of a derivative action by a shareholder) on any cause of action arising out of the transaction of business in this State, until such corporation shall have obtained a certificate of authority. Nor shall any action, suit, or proceeding on any such cause of action be maintained in any court of this State by any successor, assignee, or legal representative of such foreign corporation, until a certificate of authority shall have been obtained by such corporation or by a foreign corporation which has acquired all or substantially all of its assets. It is expressly provided, however, that the provisions of this article shall not affect the rights of any assignee of the foreign corporation as the holder in due course of a negotiable promissory note, check, or bill of exchange, or as the bona fide purchaser for value of a warehouse receipt, stock certificate, or other instrument made negotiable by law.

B. The failure of a foreign corporation to obtain a certificate of authority to transact business in this State shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action, suit or proceeding in any court of this State.

C. A foreign corporation which transacts business in this State without a certificate of authority shall be liable to this State, for the years or parts thereof during which it transacted business in this State without a certificate of authority, in an amount equal to all fees and franchise taxes which would have been imposed by law upon such corporation had it duly applied for and received a certificate of authority to transact business in this State as required by law and thereafter filed all reports required by law, plus all penalties imposed by law for failure to pay such fees and franchise taxes. In addition to the penalties and payments thus prescribed, such corporation shall forfeit to this State an amount not less than One Hundred Dollars (\$100) nor more than Five Thousand Dollars (\$5,000) for each month or fraction thereof it shall have transacted business in this State without a certifi-

cate. The Attorney General shall bring suit to recover all amounts due this State under the provisions of this section.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

PART NINE

Art. 9.01. Interrogatories by Secretary of State

A. The Secretary of State may propound to any corporation, domestic or foreign, subject to the provisions of this Act, and to any officer or director thereof, such interrogatories as may be reasonably necessary and proper to enable him to ascertain whether such corporation has complied with all the provisions of this Act. Such interrogatories shall be answered within thirty days after the mailing thereof, or within such additional time as shall be fixed by the Secretary of State, and the answers thereto shall be full and complete and shall be made in writing and under oath. If such interrogatories be directed to an individual, they shall be answered by him, and if directed to a corporation, they shall be answered by the president, vice president, secretary or assistant secretary thereof. The Secretary of State need not file any document to which such interrogatories relate until such interrogatories be answered as herein provided, and not then if the answers thereto disclose that such document is not in conformity with the provisions of this Act. The Secretary of State shall certify to the Attorney General, for such action as the Attorney General may deem appropriate, all interrogatories and answers thereto which disclose a violation of the provisions of this Act.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

Art. 9.02. Information Disclosed by Interrogatories

A. Interrogatories propounded by the Secretary of State and the answers thereto shall not be open to public inspection nor shall the Secretary of State disclose any facts or information obtained therefrom except insofar as his official duty may require the same to be made public or in the event such interrogatories or the answers thereto are required for evidence in any criminal proceedings or in any other action by this State.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

Art. 9.03. Powers of Secretary of State

A. The Secretary of State shall have the power and authority reasonably necessary to enable him to administer this Act efficiently and to perform the duties therein imposed upon him.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

Art. 9.04. Appeals from Secretary of State

A. If the Secretary of State shall fail to approve any articles of incorporation, application for certificate of authority to transact business in this State, amendment, merger, consolidation, or dissolution, or any other document required by this Act to be approved by the Secretary of State before the same shall be filed in his office, he shall, within ten days after the delivery thereof to him, give written notice of his disapproval to the person or corporation, domestic or foreign, delivering the same, specifying in such notice the reasons therefor. From such disapproval such person or corporation may appeal to any district court of Travis County by filing with the clerk of such court a petition setting forth a copy of the articles or other document sought to be filed and a copy of the written disapproval thereof by the Secretary of State; whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the Secretary of State or direct him to take such action as the court may deem proper.

B. Appeals from all final orders and judgments entered by the district court under this Article in review of any ruling or decision of the Secretary of State may be taken as in other civil actions.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

Art. 9.05. Certificates and Certified Copies to be Received in Evidence

A. All certificates issued by the Secretary of State in accordance with the provisions of this Act, and all copies of documents filed in his office in accordance with the provisions of this Act, when certified by him, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated, and shall be subject to recodation. A certificate by the Secretary of State, under the great seal of this State, as to the existence or non-existence of the facts relating to corporations which would not appear from a certified copy of any of the foregoing documents or certificates shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or non-existence of the facts therein stated.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

Art. 9.06. Forms to be Promulgated by Secretary of State

A. Forms may be promulgated by the Secretary of State for all reports and all other documents required to be filed in the office of the Secretary of State. The use of such forms, however, shall not be mandatory, except in instances in which the law may specifically so provide.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

Art. 9.07. Time for Filing Documents in the Office of the Secretary of State

A. Whenever any document is required to be filed in the office of the Secretary of State by any provision of this Act, the requirement of the statute shall be construed to involve the requirement that same be so filed with reasonable promptness.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

Art. 9.08. Greater or Lesser Voting Requirements for Certain Corporate Actions

A. Whenever, with respect to any action to be taken by the shareholders of a corporation, the articles of incorporation require the vote or concurrence of the holders of a greater or lesser number of shares, or of any class or series thereof, than is required by this Act with respect to such action, the provisions of the articles of incorporation shall control, provided the lesser number constitutes a majority or more.

B. If pursuant to Section A of this article, any provision of the articles of incorporation requires the vote or concurrence of the holders of a greater number of shares, or of any class or series of the shares, than is required by this Act, that provision of the articles of incorporation may not be amended or modified directly or indirectly by any vote or concurrence less than the greater number unless otherwise provided in the articles of incorporation.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1973, 63rd Leg., p. 1511, ch. 545, § 43, eff. Aug. 27, 1973; Acts 1981, 67th Leg., p. 3117, ch. 818, § 8, eff. Aug. 31, 1981.]

Art. 9.09. Waiver of Notice

A. Whenever any notice is required to be given to any shareholder or director of a corporation under the provisions of this Act or under the provisions of the articles of incorporation or bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

Art. 9.10. Actions Without a Meeting: Telephone Meetings

A. Any action required by this Act to be taken at a meeting of the shareholders of a corporation, or any action which may be taken at a meeting of the shareholders, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the shareholders entitled to vote with respect to the subject matter thereof, and such consent shall have the same force and effect as a unanimous vote of shareholders, and may be stated as such in any articles or document filed with the Secretary of State.

WTSC Corporations—9

B. Unless otherwise restricted by the articles of incorporation or by-laws, any action required or permitted to be taken at a meeting of the board of directors or any committee may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all the members of the board of directors or committee, as the case may be. Such consent shall have the same force and effect as a unanimous vote at a meeting, and may be stated as such in any document or instrument filed with the Secretary of State.

C. Subject to the provisions required or permitted by this Act for notice of meetings, unless otherwise restricted by the articles of incorporation or by-laws, shareholders, members of the board of directors, or members of any committee designated by such board, may participate in and hold a meeting of such shareholders, board, or committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1967, 60th Leg., p. 1728, ch. 657, § 17, eff. June 17, 1967; Acts 1973, 63rd Leg., p. 1511, ch. 545, § 44, eff. Aug. 27, 1973.]

Art. 9.11. Application to Foreign and Interstate Commerce

A. The provisions of this Act shall apply to commerce with foreign nations and among the several states only in so far as the same may be permitted under the provisions of the Constitution of the United States.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

Art. 9.12. Reservation of Power

A. The Legislature shall at all times have power to prescribe such regulations, provisions, and limitations as it may deem advisable, which regulations, provisions, and limitations shall be binding upon any and all corporations subject to the provisions of this Act, and the Legislature shall have power to amend, repeal, or modify this Act.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

Art. 9.13. Effect of Invalidity of Part of This Act

A. If a court of competent jurisdiction shall adjudicate to be invalid or unconstitutional any clause, sentence, subsection, section, or Article of this Act, such judgment or decree shall not affect, impair, invalidate, or nullify the remainder of this Act, but the effect thereof shall be confined to the clause,

sentence, subsection, section, or Article of this Act so adjudged to be invalid or unconstitutional.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

Art. 9.14. To What Corporations This Act Applies; Procedure for Adoption of Act by Existing Corporations

A. This Act does not apply to domestic corporations organized for the purpose of operating banks, trust companies, building and loan associations or companies, insurance companies of every type or character that operate under insurance laws of this State and corporate attorneys in fact for reciprocal or inter-insurance exchanges, railroad companies, cemetery companies, cooperatives or limited cooperative associations, labor unions, or abstract and title insurance companies whose purposes are provided for and powers are prescribed by Chapter 9 of the Insurance Code of this State,¹ or to domestic or foreign corporations organized for the purpose of operating nonprofit institutions, including but not limited to those devoted to charitable, benevolent, religious, patriotic, civic, cultural, missionary, educational, scientific, social, fraternal, athletic, or aesthetic purposes, or to any foreign corporations which are granted authority to transact business within this State under any special statutes; provided, however, that if any of said excepted domestic corporations were heretofore or are hereafter organized under special statutes which contain no provisions in regard to some of the matters provided for in this Act, or any such excepted foreign corporations were heretofore or are hereafter granted authority to transact business within this State under any special statute which contains no provisions in regard to some of the matters provided for in this Act in respect of foreign corporations, or if such special statutes specifically provide that the general laws for incorporation or for the granting of a certificate of authority to transact business in this State, as the case may be, shall supplement the provisions of such statutes, then the provisions of this Act shall apply to the extent that they are not inconsistent with the provisions of such special statutes.

B. For a period of five (5) years from and after the effective date of this Act, it shall not apply to any domestic corporation duly chartered or existing on said effective date or to any foreign corporation holding, on that date, a valid permit to do business in this State; unless such domestic or foreign corporation shall, during such period of five (5) years, voluntarily elect to adopt the provisions of this Act and shall comply with the procedure prescribed by Section C of this Article.

C. During the period of five (5) years from and after the effective date of this Act, any domestic corporation duly chartered or existing prior to said effective date and any foreign corporation holding a

valid permit to do business in this State, prior to the effective date of this Act, may voluntarily elect to adopt the provisions of this Act and may become subject to its provisions by taking the following steps:

(1) As to domestic corporations, a resolution reciting that the corporation voluntarily adopts this Act shall be adopted by the board of directors and shareholders by the procedure prescribed by this Act for the amendment of articles of incorporation. As to foreign corporations, a resolution shall be adopted by the board of directors, reciting that the corporation voluntarily adopts this Act.

(2) Upon adoption of the required resolution or resolutions, an instrument shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which shall set forth:

- (a) The name of the corporation.
- (b) Each resolution adopted by the corporation.
- (c) The date of the adoption of each resolution.
- (d) The post office address of its initial registered office, and the name of its initial registered agent at such address.

(3) Duplicate originals of such document shall be delivered to the Secretary of State. If the Secretary of State finds that such document conforms to law, he shall, when all fees and franchise taxes have been paid as prescribed by law:

- (a) Endorse on each of such duplicate originals the word "Filed," and the month, day, and year of the filing thereof.
- (b) File one of such duplicate originals in his office.
- (c) Deliver the other duplicate original to the corporation or its representative.

(4) Upon the filing of such document, all provisions of this Act shall thereafter apply to the corporation.

D. Except for the exceptions and limitations of Section A of this Article, this Act shall apply to all domestic corporations organized after the date on which this Act becomes effective and to all foreign corporations transacting, or seeking to transact, business within this State and not holding, on the effective date of this Act, a valid permit so to do, and to all domestic and foreign corporations electing within five (5) years to adopt this Act and manifesting their election in the manner provided in Section C of this Article.

E. Effective September 6, 1960, this Act shall apply to all domestic corporations and to all foreign corporations transacting or seeking to transact business in this State, except for the exceptions and

limitations of Section A of this Article and with the further exception that no domestic corporation existing at the time that this Act becomes effective and no foreign corporation holding a valid permit to do business in this State at the time this Act becomes effective, which has not adopted this Act prior to September 6, 1960 by complying with Section C of this Article and which has not amended its articles of incorporation or its certificate of authority, as the case may be, after this Act becomes applicable thereto, shall be deemed to have failed to comply with the provisions of this Act by reason of the fact that:

(1) The name of such corporation does not conform with the provisions of Articles 2.05A(1) and 8.03A(1) of this Act provided such name does conform with the other provisions of this Act and all other laws of this State.

(2) Such corporation has never received for the issuance of shares consideration of the value of at least One Thousand Dollars (\$1,000) in conformity with the minimum requirements of this Act.

If any such corporation should amend its articles of incorporation or its certificate of authority, as the case may be, after this Act becomes applicable thereto, such corporation must, simultaneously with or prior to filing such amendment with the Secretary of State, take such action as may be necessary to bring such corporation into conformity with the provisions of this Act.

F. Except for domestic and foreign corporations organized for the purposes set forth in Section A above, each domestic corporation existing on September 6, 1955, which meanwhile has not been dissolved nor adopted this Act by complying with Section C of this Article and each foreign corporation holding a valid permit to do business in this State on September 6, 1955, which meanwhile has not surrendered its permit nor adopted this Act by complying with Section C of this Article, shall execute and file, as a part of its annual report required to be filed for franchise tax purposes under Article 7089 of the Revised Civil Statutes of Texas between January 1 and March 15, 1960, the following described statement:

(1) Such statement shall be executed in duplicate by the president or a vice-president and by the secretary or an assistant secretary of the corporation, and verified by one of the officers signing such statement, and shall set forth:

(a) The name of the corporation;

(b) The post office address of its initial registered office, and the name of its initial registered agent at such address;

(c) That such designation and appointment was authorized by resolution duly adopted by its board of directors.

(2) Duplicate originals of such statement shall be delivered to the Secretary of State. If the Secretary of State finds that such statement conforms to law, he shall when all fees and franchise taxes have been paid as prescribed by law:

(a) Endorse on each of such duplicate originals the word "Filed", and the month, day and year of the filing thereof;

(b) File one of such duplicate originals in his office;

(c) Deliver the other duplicate original to the corporation or its representative.

(3) No fee shall be charged for the filing of such statement.

(4) Such statement shall not become effective until September 6, 1960, and the registered office and registered agent designated therein may be changed at any time in accordance with the provisions of this Act.

(5) Such statement shall be deemed to be a part of the annual report for franchise tax purposes, and failure to file such statement shall subject the corporation to the penalties set forth in Articles 7089 et seq. of the Revised Civil Statutes of Texas for failure to file an annual report.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1959, 56th Leg., p. 224, ch. 132, §§ 1, 2; Acts 1959, 56th Leg., p. 224, ch. 132, § 3.]

¹ Insurance Code, arts. 9.01-9.27.

Art. 9.15. Extent to Which Existing Laws Shall Remain Applicable to Corporations

A. Except as provided in the last preceding Article, existing corporations shall continue to be governed by the laws heretofore applicable thereto.

B. Except as provided in Section B of Article 9.16 of this Act, any special limitations, obligations, liabilities, and powers, applicable to a particular kind of corporation for which special provision is made by the laws of this State, including, (but not excluding other corporations) those corporations subject to supervision under Article 1524a of the Revised Civil Statutes of Texas,¹ shall continue to be applicable to any such corporation, and this Act is not intended to repeal and does not repeal the statutory provisions providing for these special limitations, obligations, liabilities, and powers.

C. Provided that nothing in this Act shall in anywise affect or nullify the Antitrust Laws of this State.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

¹ Repealed; see, now, Civil Statutes, art. 1513a.

Art. 9.16. Repeal of Existing Laws; Extent and Effect Thereof

A. Subject to the provisions of the two last preceding Articles of this Act and of Section C of

Article 2.02 of this Act and Section B of this Article, and excluding any existing general act not inconsistent with any provision of this Act, no law of this State pertaining to private corporations, domestic or foreign, shall hereafter apply to corporations organized under this Act, or which obtain authority to transact business in this State under this Act, or to existing corporations which adopt this Act.

B. Chapter 15 of Title 32, Revised Civil Statutes of Texas, 1925, as amended,¹ is hereby repealed effective five (5) years after the date on which this Act becomes effective; provided that such Chapter 15, Title 32, shall not hereafter apply to corporations organized under this Act, or which obtain authority to transact business in this State under this Act, or to existing corporations which adopt this Act.

C. The repeal of a prior act by this Act shall not affect any right accrued or established, or any liability or penalty incurred, under the provisions of such Act, prior to the repeal thereof.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

¹ Civil Statutes, art. 1495 et seq.

PART TEN

Art. 10.01. Filing and Filing Fees

A. The Secretary of State is authorized and required to collect for the use of the State the following fees:

(1) Filing articles of incorporation of a domestic corporation and issuing a certificate of incorporation, Two Hundred Dollars (\$200.00).

(2) Filing articles of amendment of a domestic corporation and issuing a certificate of amendment, One Hundred Dollars (\$100.00).

(3) Filing articles of merger or consolidation, whether the surviving or new corporation be a domestic or foreign corporation, Two Hundred Dollars (\$200.00).

(4) Filing an application of a foreign corporation for a certificate of authority to transact business in this State and issuing such a certificate of authority, Five Hundred Dollars (\$500.00).

(5) Filing an application of a foreign corporation for an amended certificate of authority to transact business in this State and issuing such an amended certificate of authority, One Hundred Dollars (\$100.00).

(6) Filing restated articles of incorporation of a domestic corporation, Two Hundred Dollars (\$200.00).

(7) Filing application for reservation of corporate name and issuing certificate therefor, Twenty-Five Dollars (\$25.00).

(8) Filing notice of transfer of reserved corporate name and issuing a certificate therefor, Ten Dollars (\$10.00).

(9) Filing application for registration of corporate name and issuing a certificate therefor, Fifty Dollars (\$50.00).

(10) Filing application for renewal of registration of corporate name and issuing a certificate therefor, Fifty Dollars (\$50.00).

(11) Filing statement of change of registered office or registered agent, or both, Ten Dollars (\$10.00).

(12) Filing statement of change of address of registered agent, Ten Dollars (\$10.00); provided, however, that the maximum fee for simultaneous filings by a registered agent for more than one corporation shall not exceed Five Hundred Dollars (\$500.00).

(13) Filing statement of resolution establishing series of shares, Ten Dollars (\$10.00).

(14) Filing statement of cancellation of redeemable shares, Ten Dollars (\$10.00).

(15) Filing statement of cancellation of re-acquired shares, Ten Dollars (\$10.00).

(16) Filing statement of reduction of stated capital, Ten Dollars (\$10.00).

(17) Filing articles of dissolution and issuing certificate therefor, Twenty-Five Dollars (\$25.00).

(18) Filing application for withdrawal and issuing certificate therefor, Ten Dollars (\$10.00).

(19) Filing certificate from home state that foreign corporation is no longer in existence in said state, Ten Dollars (\$10.00).

(20) Maintaining a record of service of any process, notice or demand upon the Secretary of State as agent for foreign and domestic corporations and for any foreign association, joint stock company, partnership, or nonresident natural person, Ten Dollars (\$10.00).

(21) Filing a bylaw or agreement restricting transfer of shares or securities other than as an amendment to the articles of incorporation, Ten Dollars (\$10.00).

(22) Filing any instrument pursuant to this Act not expressly provided for above, Ten Dollars (\$10.00).

(23) Filing application for reinstatement of corporate charter or certificate of authority following forfeiture under the Tax Code, Fifty Dollars (\$50.00).

B. Except as otherwise expressly provided in this Act, any instrument to be filed pursuant to this Act shall be executed by its president or a vice-president and by its secretary or an assistant secretary,

and verified by one of the officers signing such instrument, and the original and a copy of the instrument shall be delivered to the Secretary of State with copies attached thereto of any document incorporated by reference in or otherwise made a part of such instrument, or to be filed by means of such instrument. If the Secretary of State finds that such instrument conforms to law, he shall, when all franchise taxes and fees have been paid as prescribed by law:

(a) endorse on the original and the copy the word "Filed", and the month, day, and year of the filing thereof;

(b) file the original in his office;

(c) issue any certificate required by this Act relating to the subject matter of the filed instrument; and

(d) return the copy, affixed to any certificate required to be issued by the Secretary of State, to the corporation or its representative.

[Acts 1955, 54th Leg., p. 239, ch. 64. Amended by Acts 1957, 55th Leg., p. 111, ch. 54, § 13; Acts 1961, 57th Leg., p. 451, ch. 224, § 1, eff. May 25, 1961; Acts 1967, 60th Leg., p. 1729, ch. 657, § 18, eff. June 17, 1967; Acts 1969, 61st Leg., p. 2701, ch. 884, § 1, eff. Sept. 1, 1969; Acts 1975, 64th Leg., p. 321, ch. 134, § 21, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 232, ch. 120, § 46, eff. May 9, 1979; Acts 1981, 67th Leg., p. 847, ch. 297, § 32, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 687, ch. 158, § 4, eff. May 20, 1983; Acts 1983, 68th Leg., p. 315, ch. 69, § 10, eff. Sept. 1, 1983.]

Section 15 of Acts 1983, 68th Leg., p. 319, ch. 69, provides: "This Act applies only to a fee becoming due on or after the effective date of this Act. A fee becoming due before the effective date of this Act is governed by the law in effect when the fee became due, and that law is continued in effect for that purpose."

PART ELEVEN

Art. 11.01. Emergency Clause

A. The fact that existing laws of the State of Texas have been amended from time to time over a period of some seventy (70) years and more without any adoption meanwhile of a complete Act relating to business corporations generally, the provisions of which are consistent with one another; the fact that with so many amendments of the corporation laws applicable to business corporations generally over so many years there have developed many uncertainties in the corporation laws of this State and with the result that there is now an imperative need for clarification of certain provisions of the existing laws; the fact that all of the other states than Texas in which large and important business is transacted have adopted in recent years modern corporation laws and with the result that Texas citizens are increasingly prone to organize their corporate ventures under the laws of other states than the laws of Texas because Texas does not have such a modern act; and the fact that Texas in such

connection is losing a substantial volume of corporate enterprise which it should otherwise gain from and after the time that a modern business corporation Act becomes effective in Texas and is losing tax income from ad valorem taxes, filing fees and otherwise meanwhile; all such facts create an emergency and public necessity that the Constitutional Rule requiring bills to be read on three separate days in each House be suspended and said Rule is hereby suspended; and require that this Act take effect and be in force from and after the date of its enactment, and it is so enacted.

[Acts 1955, 54th Leg., p. 239, ch. 64.]

PART TWELVE

Art. 12.01. Short Title

Citation

A. This part may be cited as the "Texas Close Corporation Law."

[Acts 1981, 67th Leg., p. 3102, ch. 818, § 1, eff. Aug. 31, 1981.]

Art. 12.02. Definitions

In General

A. In this part, unless the context otherwise requires:

(1) "Close corporation" means a domestic corporation formed in conformance with the requirements of this part.

(2) "Ordinary corporation" means a domestic corporation that is not a close corporation.

(3) "Shareholders' agreement" means a written agreement regulating any aspect of the business and affairs of a close corporation or the relations among its shareholders that has been executed in conformance with Article 12.33 of this Act.

(4) "Close corporation provision" means a provision in the articles of incorporation of a close corporation or in a shareholders' agreement.

Cross-Reference

B. Article 12.51 of this Act provides definitions of terms that pertain to judicial proceedings concerning a close corporation.

[Acts 1981, 67th Leg., p. 3102, ch. 818, § 1, eff. Aug. 31, 1981.]

Art. 12.03. Applicability

Part Twelve

A. This part applies only to a close corporation.

Other Parts

B. To the extent not inconsistent with this part, all other parts of this Act apply to a close corporation.

[Acts 1981, 67th Leg., p. 3102, ch. 818, § 1, eff. Aug. 31, 1981.]

[Articles 12.04 to 12.10 reserved for expansion]

Art. 12.11. Articles of Incorporation**In General**

A. In addition to any provision required or permitted to be set forth in the articles by Article 3.02 of this Act the articles of incorporation of a close corporation, whether original, amended, or restated, must include the following statement: "This corporation is a close corporation."

[Acts 1981, 67th Leg., p. 3102, ch. 818, § 1, eff. Aug. 31, 1981.]

Art. 12.12. Formation of a Close Corporation**In General**

A. A close corporation shall be formed in conformance with Part Three and Article 12.11 of this Act.

[Acts 1981, 67th Leg., p. 3102, ch. 818, § 1, eff. Aug. 31, 1981.]

Art. 12.13. Adoption of Close Corporation Status**By Amendment of Articles of Incorporation**

A. An ordinary corporation may become a close corporation by amending its articles of incorporation in conformance with Part Four and Article 12.11 of this Act. An amendment adopting close corporation status must be approved by the affirmative vote of the holders of all the outstanding shares of each class, whether or not entitled to vote on the amendment by the articles of incorporation of the ordinary corporation.

Through Merger or Consolidation

B. A surviving or new corporation resulting from a merger or consolidation in conformance with Part Five of this Act may become a close corporation if as part of the plan of merger or consolidation its articles of incorporation conform with Article 12.11 of this Act. Any plan of merger or consolidation adopting close corporation status must be approved by the affirmative vote of the holders of all the outstanding shares, and of each class of shares, of each corporation that is party to the merger or consolidation, whether or not entitled to vote on the plan by the articles of incorporation of the corporation.

[Acts 1981, 67th Leg., p. 3102, ch. 818, § 1, eff. Aug. 31, 1981.]

Art. 12.14. Existing Close Corporation**In General**

A. If an existing corporation that elected to become a close corporation in conformance with former Article 2.30-1 of this Act has not terminated that status before the effective date of this part:

(1) the corporation is considered to be a close corporation under this part;

(2) a provision in its articles of incorporation authorized by Section G or H of former Article 2.30-1 of this Act or by former Article 2.30-5 of this Act continues to be valid and enforceable so long as its status as a close corporation has not been terminated;

(3) an agreement among its shareholders in conformance with former Article 2.30-2 of this Act is considered to be a shareholders' agreement, if the agreement conforms with Articles 12.32 through 12.37 of this Act; and

(4) any certificate representing its shares issued or delivered after the effective date of this part, whether in connection with an original issue of shares, a transfer of shares, or otherwise, must conform with Article 12.39 of this Act.

[Acts 1981, 67th Leg., p. 3102, ch. 818, § 1, eff. Aug. 31, 1981.]

[Articles 12.15 to 12.20 reserved for expansion]

Art. 12.21. Termination of Close Corporation Status**In General**

A. A close corporation terminates its status as a close corporation:

(1) on filing a statement of termination in conformance with Article 12.22 of this Act;

(2) by amending its articles of incorporation in conformance with Part Four of this Act to delete from its articles the statement that it is a close corporation;

(3) through a merger or consolidation in conformance with Part Five of this Act unless the plan of merger or consolidation provides that the surviving or new corporation will continue as or become a close corporation and the plan has been approved by the affirmative vote or consent of the holders of all the outstanding shares, and of each class of shares, of the close corporation, whether or not entitled to vote on the plan by the articles of incorporation; or

(4) when termination is decreed in a judicial proceeding to enforce a close corporation provision providing for the termination.

[Acts 1981, 67th Leg., p. 3102, ch. 818, § 1, eff. Aug. 31, 1981.]

Art. 12.22. Statement of Termination; Filing; Notice**In General**

A. If a close corporation provision specifies a time or event, whether or not identifiable by persons dealing with the close corporation, that will terminate close corporation status, the termination becomes effective on the occurrence of the specified time or event and the filing of a statement of termination of close corporation status in accordance with this article.

Execution, Delivery and Form

B. Promptly after the time or event specified in a close corporation provision for termination of close corporation status has occurred, a statement of termination of close corporation status shall be executed on behalf of the close corporation by its president or a vice-president and by its secretary or an assistant secretary and shall be verified by one of the officers signing the statement. A copy of the applicable close corporation provision must be included in or attached to the statement. The original and a copy of the statement and the inclusion or attachment shall be delivered to the Secretary of State. The statement must set forth:

- (1) the name of the corporation;
- (2) a statement that the corporation has terminated its status as a close corporation in accordance with the included or attached close corporation provision; and
- (3) the time or event that caused the termination and, in the case of an event, the approximate date of the event.

Filing

C. If the Secretary of State finds that the statement of termination of close corporation status conforms to law, the Secretary of State shall, when all fees and franchise taxes have been paid as required by law:

- (1) endorse on the original and the copy the word "Filed" and the month, day, and year of the filing of the statement;
- (2) file the original in the office of the Secretary of State; and
- (3) return the copy to the corporation or its representative.

Effect of Filing

D. On the filing of the statement of termination of close corporation status, the articles of incorporation of the close corporation are considered to be amended to delete from the articles the statement that it is a close corporation and the corporation's status as a close corporation terminates.

Notice to Shareholders

E. On receipt of the filed copy of the statement of termination from the Secretary of State as provided by Section C of this article, the corporation shall deliver a copy of the statement to each shareholder of the corporation, either personally or by mail. If mailed, the copy is considered to be delivered when deposited in the United States mail, postage prepaid, addressed to the shareholder at his address as it appears on the stock transfer books of the corporation. Failure to deliver the notice does not affect the validity of termination of close corporation status.

[Acts 1981, 67th Leg., p. 3102, ch. 818, § 1, eff. Aug. 31, 1981.]

Art. 12.23. Effect of Termination of Close Corporation Status**In General**

A. A close corporation that terminates its status as a close corporation and becomes an ordinary corporation is subject to the provisions of this Act as if it had not elected close corporation status under this part.

Effect on Shareholders' Agreement

B. The effect of termination of close corporation status on a shareholders' agreement is governed by Section E, Article 12.36 of this Act.

Reinstatement of Governance by Board of Directors

C. If, at the time termination of close corporation status has become effective, the close corporation's business and affairs have been managed other than by a board of directors, as permitted by Article 12.31 of this Act, governance by a board of directors is instituted or reinstated:

- (1) if a shareholders' agreement so provides, in the manner stated therein or by the persons named in the agreement to serve as the interim board of directors; or
- (2) regardless of whether or not a shareholders' agreement contains a governing provision if all the parties to the agreement so agree, by a shareholders' meeting, to elect a board of directors.

Shareholders' Meeting

D. A shareholders' meeting required by Section C of this article shall be promptly called after termination of close corporation status has become effective. If a meeting is not called before the 31st day after the day on which termination becomes effective, any shareholder, whether or not entitled to call a shareholders' meeting or vote at such a meeting, has the power to call the meeting on the notice required by Article 2.25 of this Act. At the meeting there shall be elected the number of directors specified in the articles of incorporation or

bylaws, or in the absence of such a specification, three directors.

Term of Service

E. The directors succeeding to the management of the corporation as provided in Section C of this article shall serve until the next annual meeting of shareholders and until their successors shall have been elected and qualified. Until directors are elected, the shareholders of the corporation shall act as the board of directors and the business and affairs of the corporation shall be conducted in conformance with Article 12.37 of this Act.

[Acts 1981, 67th Leg., p. 3102, ch. 818, § 1, eff. Aug. 31, 1981.]

[Articles 12.24 to 12.30 reserved for expansion]

Art. 12.31. Governance of Close Corporation Affairs

Management

A. A close corporation shall be managed:

(1) by a board of directors in the same manner an ordinary corporation is managed by its board of directors under this Act; or

(2) in the manner provided for in its articles of incorporation or in a shareholders' agreement.

[Acts 1981, 67th Leg., p. 3102, ch. 818, § 1, eff. Aug. 31, 1981.]

Art. 12.32. Shareholders' Agreement—In General

Close Corporation Provisions

A. All shareholders of a close corporation may make one or more shareholders' agreements. The business and affairs of a close corporation or the relations among the shareholders that may be regulated by a shareholders' agreement include without limitation:

(1) management of the business and affairs of the close corporation with or without a board of directors, by its shareholders, or in whole or part by one or more of its shareholders or by one or more persons not shareholders;

(2) buy-sell, first option, first refusal, or similar arrangements with respect to the close corporation's shares or other securities, and restrictions on their transfer, including restrictions beyond those permitted to be imposed by Article 2.22 of this Act;

(3) declaration and payment of dividends and other distributions, whether or not in proportion to ownership of shares, in amounts permitted by this Act or the manner in which profits or losses shall be apportioned;

(4) restrictions on the rights of a transferee of shares or assignee to participate in the management or administration of the close corporation's business

and affairs during the term of the shareholders' agreement;

(5) rights of one or more shareholders to dissolve the close corporation at will or on the occurrence of a specified event or contingency in which case the dissolution of the close corporation shall proceed as if all of its shareholders had consented in writing to dissolution of the close corporation as provided by Article 6.02 of this Act;

(6) exercise or division of voting power either in general or in regard to specified matters by or among the shareholders of the close corporation or other persons, including without limitation:

(a) voting agreements and voting trusts that need not conform with Article 2.30 of this Act;

(b) requiring the vote or consent of the holders of a greater or lesser number of shares than is otherwise required by this Act or other law, including any action for termination of close corporation status;

(c) granting one or some other specified number of votes for each shareholder; and

(d) permitting any action for which this Act requires approval by the vote of the board of directors or by a vote of the shareholders of an ordinary corporation or by both, to be taken without such a vote, in the manner provided in the shareholders' agreement;

(7) terms and conditions of employment of any shareholder, director, officer, or other employee of the close corporation, regardless of the length of the period of employment;

(8) the natural persons who shall be directors, if any, and officers of the close corporation;

(9) arbitration of issues about which the shareholders may become deadlocked in voting or about which the directors or those empowered to manage the close corporation may become deadlocked and the shareholders are unable to break the deadlock;

(10) termination of close corporation status, including any right of dissent or other rights that shareholders who object to the termination may be granted;

(11) qualifications of persons who are or are not entitled to be shareholders of the close corporation;

(12) amendments to or termination of the shareholders' agreement; and

(13) any provision required or permitted by this Act to be set forth in the bylaws.

[Acts 1981, 67th Leg., p. 3102, ch. 818, § 1, eff. Aug. 31, 1981.]

Art. 12.33. Shareholders' Agreements—Procedures Required**Execution**

A. A shareholders' agreement shall be executed:

(1) in the case of an existing close corporation, by each person who is then a shareholder, whether or not the shareholder has voting power;

(2) in the case of an existing ordinary corporation that pursuant to the agreement will adopt close corporation status in conformance with Article 12.13 of this Act, by each person who is then a shareholder, whether or not the shareholder has voting power; or

(3) in the case of a close corporation that is being formed in conformance with Article 12.12 of this Act, by each person who either is a subscriber to its shares or by the shareholders' agreement agrees to become a holder of its shares.

Amendment of Agreement

B. Unless otherwise provided in a shareholders' agreement, an amendment to the shareholders' agreement may be adopted only by the written consent of each person who would be required to execute the shareholders' agreement if it were being executed originally at the time of adoption of the amendment, whether or not the person has voting power in the close corporation.

Delivery of Shareholders' Agreement

C. The close corporation shall deliver a complete copy of any shareholders' agreement to each person who is bound by the shareholders' agreement and who is or will become a shareholder in the close corporation as provided in Section A of this article when a certificate or certificates representing shares in the close corporation are delivered to the person. The close corporation shall also deliver a complete copy of any shareholders' agreement to each person to whom a certificate representing shares is issued and who has not received a complete copy of the agreement. Failure to deliver a complete copy of a shareholders' agreement as required by this section does not affect the validity or enforceability of the shareholders' agreement.

[Acts 1981, 67th Leg., p. 3102, ch. 818, § 1, eff. Aug. 31, 1981.]

Art. 12.34. Statement of Operation as a Close Corporation**In General**

A. If on or after the formation of a close corporation or adoption of close corporation status, a close corporation begins to conduct its business and affairs pursuant to a shareholders' agreement that has become effective, the close corporation shall

promptly execute and file a statement of operation as a close corporation with the Secretary of State.

Execution and Delivery

B. A statement of operation as a close corporation shall be executed on behalf of the close corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing the statement. The close corporation shall deliver the original and a copy of the statement to the Secretary of State. The statement must set forth:

(1) the name of the close corporation;

(2) a statement that the close corporation is being operated and its business and affairs are being conducted under the terms of a shareholders' agreement made pursuant to the Texas Close Corporation Law; and

(3) the date when the operation of the corporation began.

Filing

C. If the Secretary of State finds that the statement of operation as a close corporation conforms to law, the Secretary of State shall, when all fees and franchise taxes have been paid as required by law:

(1) endorse on the original and the copy the word "Filed" and the month, day, and year of the filing of the statement;

(2) file the original in the office of the Secretary of State; and

(3) return the copy to the close corporation or its representative.

Effect of Filing

D. On the filing of the statement of operation as a close corporation, the fact that the close corporation is being operated and its business and affairs are being conducted under the terms of a shareholders' agreement becomes a matter of public record.

[Acts 1981, 67th Leg., p. 3102, ch. 818, § 1, eff. Aug. 31, 1981.]

Art. 12.35. Validity and Enforceability of Shareholders' Agreement**In General**

A. A shareholders' agreement, if executed in conformance with Article 12.33 of this Act, is valid and enforceable in accordance with its terms notwithstanding the elimination of a board of directors, notwithstanding any restriction imposed on the discretion or powers of the board of directors or those empowered to manage the close corporation, and notwithstanding that the effect of the shareholders' agreement is to treat the business and affairs of the

close corporation as if it were a partnership or in a manner that would otherwise be appropriate only among partners.

Enforcement

B. The close corporation, any of its shareholders, or any person who is a party to a shareholders' agreement may initiate a proceeding to enforce the shareholders' agreement in conformance with Article 12.52 of this Act.

[Acts 1981, 67th Leg., p. 3102, ch. 818, § 1, eff. Aug. 31, 1981.]

Art. 12.36. Binding Effect of Shareholders' Agreement

Persons Bound

A. A shareholders' agreement, if executed in conformance with Article 12.33 of this Act, is considered to be an agreement among all the shareholders of the close corporation and is binding and enforceable in accordance with its terms on all shareholders of the close corporation regardless of whether a particular shareholder acquired shares in the close corporation by purchase, gift, bequest, or otherwise, or whether the shareholder had actual knowledge of the existence of the shareholders' agreement at the time of acquiring shares. A transferee or assignee of shares of a close corporation with respect to which there is a shareholders' agreement is bound by the shareholders' agreement for all purposes whether or not the transferee or assignee executed or was aware of the agreement.

Delivery of Copy to Transferee

B. Before the transfer of any shares of a close corporation as to which there is a shareholders' agreement, the transferor shall deliver a complete copy of the shareholders' agreement to the transferee. If the transferor fails to do so:

(1) the validity and enforceability of the shareholders' agreement against all shareholders of the corporation, including the transferee, is not affected;

(2) the right, title, or interest of the transferee in the shares transferred is not adversely affected; and

(3) the transferee is entitled to obtain on demand a complete copy of the shareholders' agreement from the transferor or from the close corporation at the expense of the transferor.

Effect of Statement on Share Certificate and Delivery of Shareholders' Agreement

C. If the certificates representing shares of a close corporation contain the statements required by Section A, Article 12.39 of this Act, and a complete copy of each shareholders' agreement has been delivered as required by Section C, Article 12.33 of

this Act, each holder, transferee, or other person claiming an interest in the shares of the close corporation is conclusively presumed to have knowledge of any close corporation provision in effect at the time of the transfer.

When Party No Longer Bound

D. A person ceases to be a party to, and bound by, a shareholders' agreement, notwithstanding the person's signature to the agreement, when the person ceases to be a shareholder of the close corporation unless the person's attempted cessation as a shareholder was in violation of Section B of this article or the shareholders' agreement or unless the shareholders' agreement provides to the contrary. Cessation as a party to a shareholders' agreement or as a shareholder does not relieve a person of any liability the person may have incurred for breach of the shareholders' agreement.

Termination of Agreement

E. A shareholders' agreement terminates when the close corporation terminates its status as a close corporation except that if the shareholders' agreement so provides, the agreement or any provision of the agreement continues to be valid and enforceable to the extent permitted for an ordinary corporation by this Act or other law.

[Acts 1981, 67th Leg., p. 3102, ch. 818, § 1, eff. Aug. 31, 1981.]

Art. 12.37. Responsibility of Shareholders for Managerial Acts

In General

A. This article applies only to a close corporation whose business and affairs, pursuant to a shareholders' agreement, are managed in whole or in part by its shareholders or any other person or persons rather than solely by a board of directors.

Shareholders Deemed Directors

B. Whenever the context of this Act requires, the shareholders of the close corporation are considered to be directors of the close corporation for purposes of applying any provision of this Act other than with respect to the election and removal of directors. Any requirement that an instrument filed with any governmental agency contain a statement that a specified action has been taken by the board of directors is satisfied by a statement that the corporation is a close corporation having no board of directors and that the action was approved by the shareholders of the close corporation, or by the persons empowered to manage the business and affairs of the close corporation, pursuant to a shareholders' agreement.

Liabilities

C. The shareholders of the close corporation are subject to the liabilities imposed on directors by this Act or other law for any managerial acts or omissions, relating to any aspect of the business and affairs of the close corporation, taken by the shareholders or by any other persons empowered to manage the business and affairs of the close corporation pursuant to a shareholders' agreement if the action is required by this Act or other law to be taken by the board of directors.

Mode of Taking Action

D. Any action that this Act requires or permits to be taken by the board of directors of an ordinary corporation shall be taken, if required, or may be taken, if permitted, by action of the shareholders of the close corporation at a meeting of the shareholders or in the manner permitted by a shareholders' agreement, this article, or this Act, without a meeting. Unless otherwise provided in the articles of incorporation of the close corporation or a shareholders' agreement, such an action is binding on the close corporation if taken on the basis of:

(1) the affirmative vote of the holders of a majority of all outstanding shares entitled to vote on the action; or

(2) consent by all the shareholders of the close corporation, which may be proven by:

(a) the full knowledge of the action by all the shareholders and their failure to object to the action in a timely manner;

(b) a consent in writing to the action in conformance with Article 9.10 of this Act or any other writing executed by or on behalf of all the shareholders reasonably evidencing the consent; or

(c) any other means reasonably evidencing the consent.

Limitation of Liability

E. A shareholder of a close corporation is not liable by virtue of a shareholders' vote or shareholder action without a vote unless the shareholder had the right to vote or consent to the action. A shareholder of a close corporation, whether with or without right to vote or consent, is not liable for any action taken by the shareholders, or by the persons empowered to manage the business and affairs of the close corporation pursuant to a shareholders' agreement if the shareholder dissents from, and has not voted for or consented to, the action. The dissent may be proven by:

(1) an entry in the minutes of the meeting of shareholders;

(2) a written dissent filed with the person acting as secretary of the meeting before the adjournment of the meeting;

(3) a written dissent sent by registered mail to the secretary of the close corporation promptly after the meeting or after a consent in writing was obtained from the other shareholders; or

(4) any other means reasonably evidencing the dissent.

Lack of Formalities; Treatment as Partnership

F. Neither the failure of a close corporation to observe usual formalities or requirements prescribed for an ordinary corporation by this Act relating to the exercise of corporate powers or the management of a corporation's business and affairs nor the performance of a shareholders' agreement that treats the close corporation as if it were a partnership or in a manner that otherwise is appropriate only among partners:

(1) shall be a factor in determining whether to impose personal liability on the shareholders for the close corporation's obligations by disregarding the separate entity of the close corporation or otherwise;

(2) is grounds for invalidating an otherwise valid shareholders' agreement; or

(3) shall affect the status of the close corporation as a corporation under this Act or in law.

[Acts 1981, 67th Leg., p. 3102, ch. 818, § 1, eff. Aug. 31, 1981.]

Art. 12.38. Other Agreements Among Shareholders Permitted**In General**

A. Articles 12.31 through 12.37 of this Act do not prohibit or impair any other agreement among two or more shareholders of an ordinary corporation permitted by this Act or by other law.

[Acts 1981, 67th Leg., p. 3102, ch. 818, § 1, eff. Aug. 31, 1981.]

Art. 12.39. Close Corporation Share Certificates**Required Statements**

A. In addition to any matter required or permitted to be stated on a certificate representing shares by this Act or other law, each certificate representing shares issued by a close corporation must state conspicuously on its face or the back: "These shares are issued by a close corporation as defined by the Texas Business Corporation Act. Under that Act, a shareholders' agreement may provide for management of a close corporation by the shareholders or in other ways different from an ordinary corporation. This may subject the holder of this certificate to certain obligations and liabilities not otherwise imposed on shareholders of an ordinary corporation. On any sale or transfer of these shares, the transferor is obligated to deliver to the

transferee a complete copy of any shareholders' agreement.

Failure to Contain Statements

B. Notwithstanding any provision of this Act, including Article 2.19, to the contrary, the status of a corporation as a close corporation is not affected by the failure of any share certificate to contain the statements required by Section A of this article.

[Acts 1981, 67th Leg., p. 3102, ch. 818, § 1, eff. Aug. 31, 1981.]

[Articles 12.40 to 12.50 reserved for expansion]

Art. 12.51. Judicial Proceedings Relating to a Close Corporation

Definitions

A. As used in this article and the succeeding articles of this part, unless the context otherwise requires:

(1) "Court of competent jurisdiction" means a district court in the county in which the close corporation has its principal office.

(2) "Provisional director" means a person appointed by a court of competent jurisdiction in conformance with Article 12.53 of this Act.

(3) "Custodian" means a person appointed by a court of competent jurisdiction in conformance with Article 12.54 of this Act.

(4) "Shareholder" means any person who is a record or beneficial owner of shares in a close corporation, including any person holding a beneficial interest in the shares under an inter vivos, testamentary, or voting trust, or any person who is the personal representative, as that term is defined in the Texas Probate Code, of a record or beneficial owner.

Proceedings Authorized

B. In addition to any other judicial proceeding pertaining to an ordinary corporation provided for in this Act or by law, a proceeding may be brought in a court of competent jurisdiction by a close corporation or a shareholder to:

- (1) enforce a close corporation provision;
- (2) appoint a provisional director; or
- (3) appoint a custodian.

Notice; Intervention

C. Notice of the commencement of a proceeding must be given in the manner prescribed by this Act or other law and otherwise in a manner consistent with due process of law as directed by the court, to the close corporation, if not a plaintiff, and to each shareholder that is not a plaintiff. The close corporation or any shareholder may intervene in the proceeding.

Proceeding Nonexclusive

D. Except as otherwise provided in Section E of this article, the right of the close corporation or a shareholder to commence a proceeding permitted by Section B of this article is in addition to any other right or remedy the plaintiff may have under this Act or other law.

Unavailability of Proceeding

E. A shareholder may not commence a proceeding before any nonjudicial remedy in a close corporation provision, such as arbitration, for resolution of the issues that are in dispute has been exhausted unless the shareholder proves that the close corporation, the shareholders as a whole, or the shareholder will suffer irreparable harm before the nonjudicial remedy is exhausted. A shareholder may not commence a proceeding to seek damages or other monetary relief if the shareholder has the right to dissent from any proposed action and to receive the fair value of his shares under this Act or a shareholders' agreement.

[Acts 1981, 67th Leg., p. 3102, ch. 818, § 1, eff. Aug. 31, 1981.]

Art. 12.52. Judicial Proceedings to Enforce Close Corporation Provision

In General

A. A court of competent jurisdiction, in a judicial proceeding brought under this article, shall enforce a close corporation provision without regard to whether or not there is an adequate remedy at law. The enforcement may be by injunction, specific performance, or other relief that the court determines is fair and equitable under the circumstances, including without limitation:

- (1) damages instead of or in addition to specific enforcement;
- (2) appointment of a provisional director or custodian;
- (3) appointment of a receiver for specific assets of the close corporation in conformance with Article 7.04 of this Act;
- (4) appointment of a receiver to rehabilitate the close corporation in conformance with Article 7.05 of this Act;
- (5) subject to Section B of this article, liquidation of the assets and business and involuntary dissolution of the close corporation and appointment of a receiver to effect the liquidation in conformance with Article 7.06 of this Act; and
- (6) termination of close corporation status, but termination may not be decreed unless the court determines that all other remedies in law or in equity, including appointment of a provisional director, custodian, or other type of receiver, are

inadequate and that the size of the close corporation, the nature of its business, the number of its shareholders, or their relationship to one another or other similar factors make it wholly impractical to continue close corporation status.

Liquidation; Involuntary Dissolution; Receivership

B. Except where a shareholder seeking relief had the right to dissolve the close corporation under a shareholders' agreement, liquidation, involuntary dissolution, and receivership may not be decreed unless the court determines that all other remedies in law or in equity, including appointment of a provisional director, custodian, or other type of receiver, are inadequate.

[Acts 1981, 67th Leg., p. 3102, ch. 818, § 1, eff. Aug. 31, 1981.]

Art. 12.53. Judicial Proceeding to Appoint Provisional Director for Close Corporation

In General

A. A court of competent jurisdiction, in a proceeding brought under this article, shall appoint a provisional director for a close corporation on proof that the directors or the persons empowered to manage the business and affairs of the close corporation pursuant to a shareholders' agreement are so divided respecting the management of its affairs that the votes or consents required to take action on behalf of the close corporation cannot be obtained with the consequence that its business and affairs can no longer be conducted to the general advantage of the shareholders.

Status of Provisional Director

B. The appointment of a provisional director is subject to the following provisions:

(1) a provisional director must be an impartial person who is not a shareholder, a party to a shareholders' agreement, a person empowered to manage the close corporation pursuant to a shareholders' agreement, or a creditor of the close corporation or of any of its subsidiaries or affiliates and whose further qualifications, if any, are determined by the court;

(2) a provisional director has all the rights and powers of an elected director of the close corporation, or the rights and powers of vote or consent of a shareholder or other persons who have been empowered to manage the business and affairs of the close corporation pursuant to a shareholders' agreement (with the voting power provided by order of the court), including the right to notice of, and to vote at, meetings of directors or shareholders, as the case may be;

(3) a provisional director shall serve until removed by order of the court or by a vote of a

majority of the directors or the holders of a majority of the shares having voting power, as the case may be, or if a close corporation provision requires the concurrence of a greater or different majority for action by the directors or the shareholders, as the case may be, then by that majority; and

(4) the compensation of a provisional director shall be determined by an agreement between the provisional director and the close corporation subject to the approval of the court, which may fix the compensation in the absence of an agreement or in the event of a disagreement between the provisional director and the close corporation.

[Acts 1981, 67th Leg., p. 3102, ch. 818, § 1, eff. Aug. 31, 1981.]

Art. 12.54. Judicial Proceeding to Appoint Custodian for Close Corporation

In General

A. A court of competent jurisdiction in a judicial proceeding brought under this article shall appoint a custodian for a close corporation on proof that:

(1) at any meeting held for the election of directors, the shareholders are so divided that they have failed to elect successors to directors whose terms have expired or would have expired on qualification of their successors;

(2) the business of the close corporation is suffering or is threatened with irreparable injury because the directors, or the shareholders or the persons empowered to manage the business and affairs of the close corporation pursuant to a shareholders' agreement or otherwise, are so divided respecting the management of the affairs of the close corporation that the required vote or consent to take action on behalf of the close corporation cannot be obtained and any remedy with respect to the deadlock in a close corporation provision has failed; or

(3) the plaintiff or intervenor has the right to dissolve the close corporation under a shareholders' agreement as permitted by Article 12.32 of this Act.

Status of Custodian

B. To be eligible to serve as a custodian, a person must comply with all the qualifications required of a receiver under Article 7.07 of this Act. A person who qualifies as a custodian has all of the powers and duties and the title of a receiver appointed under Articles 7.05 through 7.07 of this Act but the authority of the custodian is to continue the business of the close corporation and not to liquidate its affairs and distribute its assets, except when the court otherwise orders or as provided by Subsection A(3) of this article. If the condition necessitating the appointment of a custodian is remedied, other than by liquidation or dissolution, the custodianship is to be terminated immediately and the management of the close corporation shall be

restored to the directors or to the shareholders of the close corporation or to the persons empowered to manage the business and affairs of the close

corporation pursuant to a shareholders' agreement, as the case may be.
[Acts 1981, 67th Leg., p. 3102, ch. 818, § 1, eff. Aug. 31, 1981.]

INDEX TO
**BUSINESS CORPORATION ACT
 AND
 TITLE 32, CORPORATIONS**

References are to Articles unless otherwise indicated

ABANDONMENT

Dissent by shareholders, abandonment by corporation of proposed action, 5.13.
 Merger or consolidation, provision in plan, 5.03.
 Sale, mortgage, etc., outside regular course of business, 5.10.

ABATEMENT

Actions and Proceedings, *this index*.

ABBREVIATION

Veterans corporation's name, use of word in name of corporation, Civ. Stat. 1302-3.01.

ABSTRACT AND TITLE INSURANCE COMPANY

Exemption, application, 9.14.
 Organization, 2.01.

ACCEPTANCE

Subscriptions, 2.14.

ACCOUNTANTS

Certificate of, defense to directors, 2.41.
 Professional corporations, Civ. Stat. 1528e.

ACCOUNTS AND ACCOUNTING

Books of account, duty to keep, 2.44.
 Consuming assets corporation, dividends, 2.39.
 Cooperative associations, Civ. Stat. 1396-50.01, § 35.

ACCRUED RIGHTS

Repeal of prior acts, effect on, 9.16.

ACKNOWLEDGMENTS

Articles of correction, Civ. Stat. 1302-7.01 et seq.
 Deed of corporation, 5.08.

ACTIONS AND PROCEEDINGS

Abatement,
 Change of corporate name by amendment, 4.06.

ACTIONS AND PROCEEDINGS

—Cont'd

Abatement—Cont'd

Dissolution or revocation of certificate, cure by corporate action before judgment, 7.02.
 Dissolved corporations, Civ. Stat. 1302-2.07.
 Merger or consolidation, 5.06.
 Recovery of fines, forfeitures or penalties from corporations, Civ. Stat. 1302-5.09.
 Amendment of articles, effect on existing causes of action, 4.06.
 Attorney General, *this index*.
 Books and records, examination by stockholders, 2.44.
 Citation, action for dissolution or revocation of certificate, 7.03.
 Close corporation, 12.51 et seq.
 Shareholders agreement, 12.35
 Corporate name, power to sue and defend in after dissolution, 7.12.
 Costs, generally, *this index*.
 Defined, indemnity, 2.02-1.
 Derivative suits, 5.14.
 Dissenting shareholders,
 Action to determine value of shares, 5.12.
 Deposit of costs, 5.14.
 Dissolution, involuntary, suit by attorney general, 7.01, 7.02.
 Dissolved corporations, Civ. Stat. 1302-2.07.
 Evidence, generally, *this index*.
 Foreclosure of state liens for fines, penalties and forfeitures, Civ. Stat. 1302-5.12.
 Foreign Corporations, *this index*.
 Injunction, generally, *this index*.
 Judgments and Decrees, generally, *this index*.
 Liens against corporate property, violations of law, Civ. Stat. 1302-5.07 et seq.
 Permission for attorney general or representatives to institute quo warranto proceedings against insolvent corporations, Civ. Stat. 1302-5.17.

ACTIONS AND PROCEEDINGS

—Cont'd

Power to sue and be sued, etc., 2.02.
 Process, generally, *this index*.
 Quo warranto, insolvent corporations, Civ. Stat. 1302-5.14 et seq.
 Receivers, actions by or against, authority, 7.07.
 Strike suits, deposit of costs, 5.14.
 Trust indentures, enforcement, Civ. Stat. 1302-2.04.
 Usury defense, Civ. Stat. 1302-2.09.
 Venue, generally, *this index*.

ADDRESS

Cooperative associations, articles of incorporation, Civ. Stat. 1396-50.01, § 8.
 Registered Agent, *this index*.

ADDRESS OF CORPORATION

Annual report, 9.14.

ADMINISTRATORS

Executors and Administrators, generally, *this index*.

AESTHETIC PURPOSES

Organization for not permitted, 2.01.

AFFIDAVITS

Foreign corporation, certificate of authority, Civ. Stat. 1302-2.08.

AFFILIATED CORPORATIONS

Liability for indebtedness of parent, subsidiary or affiliated corporation, Civ. Stat. 1302-2.06.

AFFIRMATIVE DEFENSES

Notice, incorporation, business firms, banks, etc., Civ. Stat. 1302-2.02.

AGE

Incorporators, 3.01.

AGENTS

Officers, Employees and Agents, generally, *this index*.

INDEX

264

References are to Articles unless otherwise indicated

AGREEMENTS

Contracts, generally, this index.

AGRICULTURAL CREDIT CORPORATIONS

Interest rates, Civ.Stat. 1302-2.10.

AGRICULTURE

Nonprofit Corporations, generally, this index.

ALCOHOL

Denatured alcohol railroads, incorporation, Civ.Stat. 1302-3.05.

ALLEYS

Streets and Alleys, generally, this index.

ALLOWANCES

Receivers, power of court to make to, etc., 7.07.

ALTERATION

By-laws, power vested in shareholders, 2.23.

AMENDMENTS

Articles of Incorporation, this index.

By-laws, power vested in shareholders, 2.23.

Certificates of authority. Foreign Corporations, this index.

Close Corporations, this index.

Cooperative associations, articles of incorporation, Civ.Stat. 1396-50.01 § 10.

Nonprofit Corporations, this index.

Reservation of power in Legislature to amend Act, 9.12.

Toll roads, articles of incorporation, Civ. Stat. 1453.

Uniform Stock Transfer Act, 2.22.

AMORTIZATION RESERVES

Dividends, consuming assets corporation, 2.39.

ANCILLARY RECEIVERS

Appointment, grounds, court having jurisdiction, etc., 7.07.

ANNUAL REPORTS

Dissolution for failure to file, 7.01.

Statement, filing, 9.14.

ANSWERS

Interrogatories,

Propounded by secretary of state, confidential, 9.02.

Propounded to officers or directors, 9.01.

ANTI-TRUST LAWS

Dissenting shareholders, provisions as not nullifying or repealing, 5.15.

Foreign corporations,

Affidavits, certificate of authority, Civ. Stat. 1302-2.08.

Violations of law, liens, Civ.Stat. 1302-5.07 et seq.

ANTI-TRUST LAWS—Cont'd

Housing corporations, Civ.Stat. 1524j.

Liens against corporate property for fines and penalties, Civ.Stat. 1302-5.07 et seq.

Provisions of Act as not affecting or nullifying, 9.15.

Telegraph and telephones, Civ.Stat. 1418.

Violations by corporation not authorized, 2.02.

APARTMENT HOUSES

Electricity, meters, Civ.Stat. 1446d.

APPEALS

Decisions and rulings of secretary of state, 9.04.

Housing corporations, rates, Civ.Stat. 1524h.

Telegraphs and telephones, message transfers, Civ.Stat. 1432.

APPLICATION OF LAWS

Generally, 9.15.

APPLICATIONS

Filing, this index.

Reinstatement application,

Foreign corporations, 8.16.

Involuntarily dissolved corporation, 7.01.

Renewal, registered name, 2.08.

APPRAISALS AND APPRAISERS

Dissenting shareholders, 5.12.

APPRECIATION

Dissenting shareholders, valuation of shares, 5.12.

ARCHITECTS

Professional corporations, Civ.Stat. 1528e.

ARTICLES

Division of Act into, effect, 1.01; Civ. Stat. 1302-1.01.

ARTICLES OF AMENDMENT

Articles of Incorporation, generally, this index.

ARTICLES OF ASSOCIATION

Bridges or ferry companies, Civ.Stat. 1475.

ARTICLES OF CORRECTION

Generally, Civ.Stat. 1302-7.01 et seq.

ARTICLES OF DISSOLUTION

Dissolution, generally, this index.

ARTICLES OF INCORPORATION

Generally, 3.02 et seq.

Amendments, 4.01 et seq.

Adoption of Act, 9.14.

Affidavit, 4.04.

Appeal from ruling of secretary of state, 9.04.

ARTICLES OF INCORPORATION

—Cont'd

Amendments—Cont'd

Articles of amendment,

Execution, contents, requisites, etc., 4.04.

Filing, 4.05.

Certificates and certification,

Effect, 4.06.

Filing fee, 10.01.

Issuance, 4.05.

Change of purpose, shareholder's right to dissent, 5.11.

Class voting on, 4.03.

Close corporations, 4.01, 12.13, 12.21

Class voting, 4.03.

Consuming assets corporation, amendment to become, 4.01.

Contents, requirements, 4.01.

Corporate existence, expiration by dissolution, etc., extension thereafter, 7.12.

Cumulative voting, 2.29.

Directors, authority to fix rights of series of shares, etc., 4.01.

Dissolution by expiration of time, amendment after, 7.12.

Dissolved corporation, extending or perpetuating period of existence, Civ.Stat. 1302-2.07.

Dividends, cancellation of accrued dividends, 4.01.

Duration of corporate existence, 4.01.

Filing,

Appeal from secretary of state's refusal to approve, 9.04.

Articles of amendment, 4.05.

Filing fee, 10.01.

Foreign corporations,

Revocation of certificate for failure to file amendment, 8.16.

Incorporators, authority to amend, 4.02.

Filing requirements, 4.04.

Merger, plan to set forth, changes in articles resulting, 5.01.

Merger or consolidation, 5.06.

Name of corporation, change of, 4.01.

Number submitted at one meeting of shareholders, 4.02.

Permitted amendments, 4.01.

Procedure to amend, 4.02.

Purposes, change of, 4.01.

Redemption or purchase of redeemable shares, filing statement, 4.10.

Reorganization proceedings, 4.14.

Restated articles of incorporation, 4.07.

Right to amend, 4.01.

Shares and shareholders, 4.01 et seq.

Statement filed with secretary of state establishing series, 2.13.

Statement of actions, change of name as no cause for, 4.06.

Appeal, secretary of state's disapproval of articles, etc., 9.04.

Certificate of amendment, filing fee, 10.01.

References are to Articles unless otherwise indicated

ARTICLES OF INCORPORATION

—Cont'd
 Close Corporations, this index.
 Consolidation, plan required to state articles of new corporation, 5.02.
 Consuming assets corporation, Dividends, restrictions on, 2.39.
 Recitals in articles, 1.02.
 Contents, 3.02.
 Cooperative associations, Civ.Stat. 1396-50.01, § 8 et seq.
 Corporate powers, recital unnecessary, 3.02.
 Defined, 1.02; Civ.Stat. 1302-1.02.
 Directors,
 Amendment, resolution of board, 4.02.
 Executive committee, 2.36.
 Initial board, articles to state, 2.32.
 Number, 2.32.
 Qualifications, prescribed by articles, 2.31.
 Removal, 2.32.
 Statement fixing series of shares as amendment, 2.13.
 Dissolution,
 Amendment, extending or perpetuating period of existence, Civ.Stat. 1302-2.07.
 Failure to pay filing fee, 7.01
 Dividends, restrictions on, 2.38.
 Consuming assets corporation, 2.39.
 Share dividends, articles authorized to provide for, 2.38.
 Execution by incorporators, 3.01.
 Filing, 3.03.
 Filing fee, 10.01.
 Foreign Corporations, this index.
 Incorporators,
 Authority to amend, 4.02.
 Execution, 3.01.
 Indemnification, directors and employees, 2.02-1.
 Meetings, quorum fixed by articles, 2.28.
 Merger, plan required to state changes, 5.01.
 Nonprofit Corporations, this index.
 Originals, delivery, 3.03.
 Post office address of initial registered office, etc., 3.02.
 Powers, statement unnecessary, 3.02.
 Preemptive rights, 2.22, 3.02.
 Preferred shares, series, division into, etc., 2.13.
 Purposes of corporation, statement, 2.01.
 Quorum, shareholders' meeting, 2.28.
 Reorganization proceedings, amendment, 4.14.
 Requirements, 3.02.
 Restated articles of incorporation, 4.07.
 Filing fee, 10.01.
 Restated certificate of incorporation, issuance, etc., 4.07.
 Restricting transfer of shares, recording, 2.22.
 Secretary of State, this index.
 Shares and Shareholders, this index.

WTSC Corporations—10

ARTICLES OF INCORPORATION

—Cont'd
 Signature, married woman, Civ.Stat. 1302-2.01.
 Toll roads, Civ.Stat. 1449 et seq.
ARTICLES OF MERGER AND CONSOLIDATION
Merger and Consolidation, this index.
ASSETS
 Collection and distribution, voluntary dissolution, 6.04.
 Consuming assets corporation, dividends, 2.39.
 Disposition of assets,
 Authorized by directors, 5.09.
 Special authorization of shareholders, 5.10.
 Dissolved corporations, Civ.Stat. 1302-2.07.
 Distributive shares, unknown shareholders, deposit with state treasurer, 7.11.
 Distribution,
 During liquidation before payment of debts, liability of directors, 2.41.
 Failure of creditors to file claims, receivership, effect, 7.07.
 Improper distribution, liability of directors, 2.41.
 Insolvent corporations, Civ.Stat. 1302-5.15.
 Liquidation proceedings, 7.06, 7.08.
 Creditor, application, 7.06.
 Decree of dissolution, filing with secretary of state, 7.09.
 Dissolution, action by attorney general, etc., 7.06.
 Jurisdiction of court, 7.06.
 Receivers, appointment, 7.06.
 Shareholders not necessary parties defendant, 7.08.
 Venue, 7.06.
 Misapplied or wasted, appointment of receiver, 7.05.
 Net assets, determination, 2.17.
 Proceedings to liquidate, 7.06 et seq.
 Receivers, generally, this index.
 Sales,
 Outside regular course of business, 5.10.
 Powers of corporation, 2.02.
 Regular course of business, 5.09.

ASSIGNEE FOR BENEFIT OF CREDITORS

Liability as shareholder or subscriber, 2.21.
ASSIGNMENTS
 Cooperative associations, shares, Civ.Stat. 1396-50.01, § 29.
 Enforcement, exclusive right of trustee to sue, Civ.Stat. 1302-2.04.

ASSOCIATIONS AND SOCIETIES

Cooperative Associations, generally, this index.
 Incorporators, 3.01.
 Nonprofit Corporations, generally, this index.
 Power to join, 2.02.
 Professional associations, Civ.Stat. 1528f.

ASSUMED NAME

Filing assumed name certificate, 2.05.
 Foreign corporations, 8.03.

ATHLETIC CORPORATIONS

Exemption, 9.14.
 Nonprofit Corporations, generally, this index.
 Organization, 2.01.

ATTACHMENT

Cooperative associations, Civ.Stat. 1396-50.01, § 31.
 Liens against corporate property for violations of law, enforcement, Civ.Stat. 1302-5.11.

ATTESTATION

Foreign corporation, affidavit, certificate of authority, Civ.Stat. 1302-2.08.

ATTORNEY GENERAL

Actions and proceedings,
 Citation by publication, notice mailed to corporation, 7.03.
 Dissolution, involuntary, duty to sue, 7.01.
 Foreign corporations,
 Penalties, 8.18.
 Revocation of certificate, 8.16.
 Involuntary dissolution or revocation of certificate, 7.02.
 Certification to by secretary of state, interrogatories and answers disclosing violations of Act, 9.01.
 Disclosure of information derived from examination of corporate books and records, Civ.Stat. 1302-5.04.
 Dissolution, this index.
 Divestment of realty held contrary to law, proceeding by, ultra vires defense, 2.04.
 Examination of corporate books and records, Civ.Stat. 1302-5.01 et seq.
 Foreclosure of state liens for fines, penalties and forfeitures, Civ.Stat. 1302-5.12.
 Injunction, transacting unauthorized business, ultra vires as defense, 2.04.
 Insolvent corporations, quo warranto, Civ.Stat. 1302-5.14 et seq.
 Investigation, organization, conduct and management of corporations, Civ. Stat. 1302-5.03.

ATTORNEYS

County Attorneys, generally, this index.
 Director's reliance on opinion of attorney as defense to liability, 2.41.

INDEX

266

References are to Articles unless otherwise indicated.

ATTORNEYS—Cont'd

District Attorneys, generally, this index.
Examination of books and records, 2.44.
Fees,
 Dissenting shareholders,
 Deposit securing, 5.14.
 Right to recovery, abandonment by
 corporation of proposed action,
 5.13.
Professional corporations, Civ.Stat.
 1528e.
Receivers, allowances to attorneys for,
 7.07.

ATTORNEYS IN FACT

Corporate attorneys in fact, exemption,
 9.14.
Signature on recorded deed of corpora-
 tion, 5.08.
Voting of shares, 2.29.

AUTHORIZED SHARES

Shares and Shareholders, this index.

AUTOMOBILE CLUB SERVICES

Generally, Civ.Stat. 1528d.

BANK ACCOUNTS

Foreign corporations, 8.01.

BANKS AND TRUST COMPANIES

Generally, Civ.Stat. 1513a.
Depositaries, redemption of shares, 4.08.
Exemption, 9.14.
Incorporation without change of firm
 name, notice, Civ.Stat. 1302-2.02.
Organization, 2.01.

BARRICADES

Telephone lines, armed suspects, Civ.
 Stat. 1432b.

BAYS

Causeways, Civ.Stat. 1466 et seq.

BELT LINE RAILROADS

Incorporation, purposes, Civ.Stat.
 1302-3.05.

BENEVOLENT CORPORATIONS

Exemption, 9.14.
Organization, 2.01.

BENEVOLENT SOCIETIES

Incorporation, Civ.Stat. 1399 et seq.

BILLS AND NOTES

Commercial Paper, generally, this index.

BILLS OF LADING

Crimes and offenses, dealing, Civ.Stat.
 1528h.

BOARD OF DIRECTORS

Directors, generally, this index.

BOARDS AND COMMISSIONS

Assistance, audits, Civ.Stat. 1396-2.23B.
Nonprofit corporations, audits, Civ.Stat.
 1396-2.23B.

BONDS

Acquisition of own bonds, etc., powers,
 2.02.
Causeways, Civ.Stat. 1472.
Facsimile signature and seal, Civ.Stat.
 1302-2.05.
Indentures, enforcement, exclusive right
 of trustee to sue, Civ.Stat.
 1302-2.04.
Interest, Civ.Stat. 1302-2.09.
Power to issue generally, 2.02.

BONDS (OFFICERS AND FIDUCIAR- IES)

Receivers, 7.07.

BOOK VALUE

Assets of corporation, director's reliance
 on as defense, 2.41.

BOOKS AND PAPERS

Courts, power to compel production for
 examination by shareholder, etc.,
 2.44.

Duty to keep, 2.44.

Examination by attorney general, Civ.
 Stat. 1302-5.01 et seq.

Inspection, right of shareholders, 2.44.
Minutes of proceedings, duty to keep,
 2.44.

Refusal to permit inspection by attorney
 general or representatives, Civ.Stat.
 1302-5.05.

Shareholders, record of, keeping at regis-
 tered office, etc., 2.44.

BORROWING MONEY

Loans, generally, this index.

BRIDGES

Generally, Civ.Stat. 1466 et seq.

BUILDING AND LOAN ASSOCIA- TIONS

Exemption, 9.14.
Organization, 2.01.

BUSINESS DEVELOPMENT CORPO- RATIONS

Generally, Civ.Stat. 1528g.

BYLAWS

Adoption, 2.23.
 Organization meeting of directors,
 3.06.
Alteration, amendment, or repeal, 2.23.
Contents, 2.23.
Cooperative associations, Civ.Stat.
 1396-50.01, § 11 et seq.
Directors,
 Adoption by, 2.23.
 Executive committee, 2.36.
 Initial bylaws, adoption, 2.23.
 Meetings, notice of, 2.37.
 Number, 2.32.
 Qualifications fixed by, 2.31.
 Quorum, 2.35.
 Removal, 2.32.

BYLAWS—Cont'd

Initial bylaws, adoption by directors,
 2.23.
Meetings of shareholders, place pre-
 scribed, 2.24.
Nonprofit Corporations, this index.
Officers and agents,
 Authority and duties prescribed by,
 2.42.
 Manner of electing or appointing, 2.42.
Power to make and alter, 2.02.
Professional corporations, Civ.Stat.
 1528e.
Quorum, shareholders' meeting, quorum
 fixed, 2.28.
Reorganization proceedings, amendment
 of articles of incorporation, 4.14.
Restricting transfer of shares, filing fees,
 10.01.
Shares and Shareholders, this index.
Subscriptions, additional penalties for
 failure to pay, 2.14.
Transfer books, provision for closing,
 etc., 2.26.
Transfer of shares, restrictions on, 2.22.

CALLS

Meetings of shareholders, 2.24.
Redemption of shares, 4.08.
Subscriptions, 2.14.

CANALS

Corporations, Civ.Stat. 1525.
Toll roads, crossings, Civ.Stat. 1459.
Waste water corporations, Civ.Stat. 1508.

CANCEL

Defined, 1.02.

CANCELLATION

Shares and Shareholders, this index.

CAPACITY

Lack of as no defense, 2.04.

CAPITAL SURPLUS

Surplus, this index.

CAPTIONS

Use in connection with Act, effect, 1.01;
 Civ.Stat. 1302-1.01.

CARBON DIOXIDE

Transportation, organization, 2.01

CASH

Consolidating corporation shares, conver-
 sion to cash of corporation other
 than new corporation, plan, 5.02.
Merging corporation shares, conversion
 to cash of corporation other than
 surviving corporation, plan, 5.01.

CATTLE RAISING

Combination with certain other business,
 organization, 2.01.

CAUSEWAYS

Generally, Civ.Stat. 1466 et seq.

References are to Articles unless otherwise indicated

CEMETERIES AND DEAD BODIES

Application of law, 9.14; Civ.Stat. 1302-3.03.

Non-Profit Corporation Act, applicability, Civ.Stat. 1302-3.03.

Organization, 2.01.

CERTIFICATED SHARES

Defined, 1.02.

CERTIFICATES AND CERTIFICATION

Amendments. Articles of Incorporation, this index.

Close corporations, shares, 12.39

Cooperative associations, shares and membership certificates, Civ.Stat. 1396-50.01, § 28 et seq.

Correction, Civ.Stat. 1302-7.03 et seq.

Dissolution, generally, this index.

Foreign corporations, revocation of certificate of authority, 8.16.

Merger or consolidation, issuance by secretary of state, 5.04.

Registered name, requisites, filing with secretary of state, 2.07.

Secretary of State, this index.

Shares and Shareholders, this index.

State treasurer, ownership of funds of liquidated corporation, etc., 7.11.

CERTIFICATES OF AUTHORITY

Defined, Civ.Stat. 1302-1.02.

Filing, reinstatement, fee, 10.01.

Foreign Corporations, this index.

Forfeiture, reinstatement, filing fee, 10.01.

Nonprofit Corporations, this index.

Reinstatement, filing fee, 10.01.

CERTIFICATES OF CORRECTION

Generally, Civ.Stat. 1302-7.03 et seq.

CERTIFICATES OF INCORPORATION

Incorporation, this index.

CERTIFICATES OF WITHDRAWAL

Foreign corporations, issuance, effect, 8.14.

CERTIFICATION

Certificates and Certification, generally, this index.

CERTIFIED COPIES

Decree of dissolution, filing with secretary of state, etc., 7.10.

Secretary of state, prima facie evidence, 9.05.

CERTIFIED PUBLIC ACCOUNTANTS

Professional corporations, Civ.Stat. 1528e.

CESSATION OF BUSINESS

Dissolution, generally, this index.

CHANGE OF NAME

Name of Corporation, this index.

CHARGES

Rates and Charges, generally, this index

CHARITABLE ORGANIZATIONS AND SOCIETIES

Contributions, Civ.Stat. 1349.

Fines and penalties, Civ.Stat. 1351.

Exemption, 9.14.

Nonprofit Corporations, generally, this index.

Organization, 2.01.

Usury, interposing defense, Civ.Stat. 1302-2.09.

CHARTERS

Bridge companies, Civ.Stat. 1474.

Causeway corporations, Civ.Stat. 1473.

Defined, Civ.Stat. 1302-1.02.

Ferry companies, Civ.Stat. 1474.

Filing, reinstatement, fee, 10.01.

Forfeitures,

Abatement of action by state to collect, Civ.Stat. 1302-5.09.

Insolvent corporations, Civ.Stat. 1302-5.14 et seq.

Receivers, appointment, Civ.Stat. 1302-5.10.

Refusal to permit inspection of corporate books and records, Civ.Stat. 1302-5.05.

Reinstatement, filing fee, 10.01.

Insolvent corporations, Civ.Stat. 1302-5.14 et seq.

Names, use, restrictions, Civ.Stat. 1302-3.01.

Reinstatement, filing fee, 10.01.

Road companies, Civ.Stat. 1447.

Toll roads, Civ.Stat. 1449.

CITATION

Process, generally, this index.

CITIES, TOWNS AND VILLAGES

Housing corporations, Civ.Stat. 1524e.

Telegraphs and telephones, regulation, Civ.Stat. 1422.

CITIZENSHIP

Receiver, qualifications, 7.07.

CIVIC ENTERPRISES AND ORGANIZATIONS

Contributions, Civ.Stat. 1349.

Fines and penalties, Civ.Stat. 1351.

Exemption, 9.14.

Nonprofit Corporations, generally, this index.

Organization, 2.01.

CLAIMS

Collection or compromise, 2.03.

Merger or consolidation as not affecting, 5.06.

CLASSES AND CLASSIFICATION

Directors, 2.32, 2.33.

Division into series, articles, 2.13.

Preferences, etc., change by amendment of articles, 4.01.

CLASSES AND CLASSIFICATION

—Cont'd

Shares and Shareholders, this index.

CLOSE CORPORATIONS

Generally, 12.01 et seq.

Actions and proceedings, 12.51 et seq.

Shareholders agreement, 12.35

Agreements,

Shareholders, 12.31 et seq.

Defined, 12.02

Amendments,

Articles of incorporation, 12.13

Termination, 12.21

Shareholders agreement, 12.33.

Application of law, 12.03

Existing corporations, 12.14

Articles of incorporation, 3.02, 12.11 et seq.

Amendments, 4.01.

Class voting, 4.03.

Management, 3.02.

Bylaws, shareholders agreement, 12.32.

Certificates and certification, shares, 12.39

Class voting, amendments of articles of incorporation, 4.03.

Compensation and salaries, provisional director, 12.53.

Custodian, 12.51 et seq.

Definitions, 1.02, 12.02.

Judicial proceedings, 12.51

Delivery, shareholders agreement, 12.32.

Directors, provisional directors, 12.51 et seq.

Dissolution,

Involuntary dissolution, 12.52

Shareholders agreement, 12.32.

Elections, shareholders agreement, 12.32.

Existing corporations, application of law, 12.14

Filing, termination statement, 12.22

Formation, 12.12

Injunction, 12.52

Intervention, 12.51

Involuntary dissolution, 12.52

Judicial proceedings, provisional director, 12.53.

Liquidation, 12.52

Management, 12.31, 12.37

Meetings, reinstatement, 12.23

Merger and consolidation, 12.13

Termination, 12.21

Notice,

Actions and proceedings, 12.51

Termination, 12.22

Privileges and immunities, 12.37

Provisional directors, 12.51 et seq.

Receivers and receivership, 12.52

Reinstatement, 12.23

Removal from office, provisional director, 12.53.

Sales,

Shareholders agreement, 12.32.

Shares, restrictions, 2.22

Shares and shareholders,

Agreements, 12.31 et seq.

INDEX

268

References are to Articles unless otherwise indicated

CLOSE CORPORATIONS—Cont'd

Shares and shareholders—Cont'd
 Agreements—Cont'd
 Defined, 12.02
 Transfers, restrictions, 2.22
 Specific performance, 12.52
 Statements,
 Operation, 12.34
 Termination, 12.21 et seq.
 Termination, 12.21 et seq., 12.52
 Shareholders agreement, 12.32, 12.36
 Transfers, shares, restrictions, 2.22

CLUBS

Contributions, Civ.Stat. 1349.

COLLATERAL SECURITY

Holder of shares as collateral, liability as shareholder, 2.21.

COLLECTING INDEBTEDNESS

Purchase of own shares, 2.03.

COLLEGES AND UNIVERSITIES

Assistance, audits, Civ.Stat. 1396-2.23B.
 Nonprofit corporations, audits, Civ.Stat. 1396-2.23B.
 Powers, Civ.Stat. 1302-3.02.

COMBINATIONS IN RESTRAINT OF TRADE

Anti-Trust Laws, generally, this index.

COMMENCEMENT OF BUSINESS

Articles of incorporation, statement in, 3.02.
 Conditions precedent, 3.05.
 Directors, liability for commencing before required amount paid in, 2.41.
 Dissolution by incorporators before, 6.01.

COMMERCIAL PAPER

Interest, Misc. 1302-2.09.
 Payment for shares, 2.16.
 Power to issue, 2.02.

COMMITTEES

Directors, 2.36.

COMPENSATION AND SALARIES

Educational corporations, power to fix, Civ.Stat. 1302-3.02.

COMPROMISE AND SETTLEMENT

Purchase of own shares, 2.03.

COMPTROLLER OF PUBLIC ACCOUNTS

Funds of dissolved or liquidated corporation, shareholder's address unknown, 7.11.

CONDEMNATION

Eminent Domain, generally, this index.

CONDOMINIUMS

Electricity, meters, Civ.Stat. 1446d.

CONFIDENTIAL OR PRIVILEGED INFORMATION

Answers to interrogatories propounded by secretary of state, 9.02.
 Attorney general, examination of corporate books and records, Civ.Stat. 1302-5.04.

CONNECTIONS

Telegraphs and telephones, Civ.Stat. 1426 et seq.

CONSERVATION OF ASSETS

Receivers, appointment for, 7.04.

CONSERVATORS

Liability as shareholder or subscriber, 2.21.
 Voting shares held by, 2.29.

CONSIDERATION

Indebtedness of corporation, Civ.Stat. 1302-2.06.
 Sale, lease, mortgage, etc., corporate property or assets, 5.09.
 Outside regular course of business, 5.10.
 Shares and Shareholders, this index.

CONSOLIDATION

Merger and Consolidation, generally, this index.

CONSPICUOUS

Defined, 1.02.

CONSPIRACY

Liens against corporate property, fines and penalties, Civ.Stat. 1302-5.07 et seq.

CONSTRUCTION

Electric light and power companies, Civ. Stat. 1435a et seq.
 Gas plants and systems, Civ.Stat. 1435a et seq.
 Toll roads, Civ.Stat. 1454.

CONSUMING ASSETS CORPORATIONS

Amendment of articles to become, 4.01.
 Certificates of shares, recital as to payment of dividends out of reserves, 1.02.
 Defined, 1.02.
 Dividends, declaration and payment, 2.39.
 Official name to include phrase, 1.02.

CONTEMPT

Housing corporations, Civ.Stat. 1524k.

CONTRACTS

Causeway corporations, Civ.Stat. 1473.
 Electric light and power companies, Civ. Stat. 1435a.
 Gas plants or systems, Civ.Stat. 1435a.
 Interest, Civ.Stat. 1302-2.09.
 Married women, duties and liabilities, Civ.Stat. 1302-2.01.

CONTRACTS—Cont'd

Nonprofit corporations, powers, Civ.Stat. 1396-2.02.
 Power to make, 2.02.
 Telegraphs and telephones, excluding other companies, Civ.Stat. 1418.
 Waterworks and water supply, Civ.Stat. 1434.

CONTRIBUTION

Charitable organizations and societies, Civ.Stat. 1349.
 Shareholders to directors making improper distribution from reduction surplus, 2.41.

CONVERSION

Shares and Shareholders, this index.

CONVERTIBLE INDEBTEDNESS

Generally, 2.14-1.

CONVEYANCES

Deeds and Conveyances, generally, this index.

COOPERATIVE ASSOCIATIONS

Generally, Civ.Stat. 1396-50.01, § 1 et seq.
 Accounts and accounting, Civ.Stat. 1396-50.01, § 35.
 Addresses, articles of incorporation, Civ. Stat. 1396-50.01, § 8.
 Agreements, mutual aid or federation, Civ.Stat. 1396-50.01, § 6.
 Amendments, articles of incorporation, Civ.Stat. 1396-50.01, § 10.
 Articles of incorporation, Civ.Stat. 1396-50.01, § 8 et seq.
 Assignments, shares, Civ.Stat. 1396-50.01, § 29.
 Attachment, Civ.Stat. 1396-50.01, § 31.
 Bylaws, Civ.Stat. 1396-50.01, § 11 et seq.
 Capital, return, limitations, Civ.Stat. 1396-50.01, § 25.
 Certificates and certification, share and membership certificates, Civ.Stat. 1396-50.01, § 28 et seq.
 Certificates of incorporation, Civ.Stat. 1396-50.01, § 9.
 Cooperative basis, defined, Civ.Stat. 1396-50.01, § 2.
 Cooperative Marketing Act, application of law, Civ.Stat. 1396-50.01, § 45.
 Crimes and offenses,
 False reports, Civ.Stat. 1396-50.01, § 41.
 Promotion expenses, Civ.Stat. 1396-50.01, § 40.
 Wrongful use of term cooperative, Civ. Stat. 1396-50.01, §§ 39, 39A.
 Definitions, Civ.Stat. 1396-50.01, § 2.
 Directors, Civ.Stat. 1396-50.01, § 21.
 Removal, Civ.Stat. 1396-50.01, § 23.
 Dissolution, Civ.Stat. 1396-50.01, § 38.
 Dividends, limitations, Civ.Stat. 1396-50.01, § 25.

References are to Articles unless otherwise indicated

COOPERATIVE ASSOCIATIONS

—Cont'd
 Elections, directors actions, approval, Civ.Stat. 1396-50.01 § 24.
 Electric cooperative corporations, Civ. Stat. 1528b.
 Exemptions, 9.14.
 Existing cooperative groups, elections, Civ.Stat. 1396-50.01 § 42.
 Expenses and expenditures, promotion expenses, Civ.Stat. 1396-50.01 § 40.
 Expulsion, members, Civ.Stat. 1396-50.01, § 33.
 Filing, articles of incorporation, Civ.Stat. 1396-50.01, § 9.
 Fines and penalties,
 False reports, Civ.Stat. 1396-50.01, § 41.
 Promotion expenses, Civ.Stat. 1396-50.01, § 40.
 Wrongful use of term cooperative in name, Civ.Stat. 1396-50.01, § 39.
 Foreign corporations and associations, Civ.Stat. 1396-50.01, § 43.
 Injunction, wrongful use of term cooperative in name, Civ.Stat. 1396-50.01, § 39.
 Insurance business, prohibitions, Civ.Stat. 1396-50.01, § 6.
 Invested capital, defined, Civ.Stat. 1396-50.01, § 2.
 Investment dividends, defined, Civ.Stat. 1396-50.01, § 2.
 Liability, members, Civ.Stat. 1396-50.01, § 32.
 Mail, voting by, Civ.Stat. 1396-50.01, § 18.
 Meetings, Civ.Stat. 1396-50.01, § 13.
 Notice, Civ.Stat. 1396-50.01, § 14.
 Organization meetings, Civ.Stat. 1396-50.01, § 9.
 Units of membership, Civ.Stat. 1396-50.01, § 15.
 Members,
 Defined, Civ.Stat. 1396-50.01, § 2.
 Eligibility, Civ.Stat. 1396-50.01, § 26.
 Membership capital, defined, Civ.Stat. 1396-50.01, § 2.
 Names, Civ.Stat. 1396-50.01, § 8.
 Protection of term cooperative, Civ. Stat. 1396-50.01, § 39.
 Net savings,
 Allocation and distribution, Civ.Stat. 1396-50.01, § 34.
 Defined, Civ.Stat. 1396-50.01, § 2.
 Nonprofit Corporation Act, application of law, Civ.Stat. 1396-50.01, § 3.
 Notice,
 Delinquent reports, Civ.Stat. 1396-50.01, § 37.
 Meetings, Civ.Stat. 1396-50.01, § 14.
 Offenses. Crimes and offenses, generally, ante.
 Officers, employees and agents, Civ.Stat. 1396-50.01, § 22.
 Removal, Civ.Stat. 1396-50.01, § 23.
 Organization, 2.01.

COOPERATIVE ASSOCIATIONS

—Cont'd
 Patronage dividends, defined, Civ.Stat. 1396-50.01, § 2.
 Penalties. Fines and penalties, generally, ante.
 Persons eligible to incorporate, Civ.Stat. 1396-50.01, § 4.
 Powers, Civ.Stat. 1396-50.01, § 6.
 Promotion expenses, Civ.Stat. 1396-50.01, § 40.
 Proxy voting, Civ.Stat. 1396-50.01, § 17.
 Purposes, Civ.Stat. 1396-50.01, § 5.
 Recall, share and membership certificates, Civ.Stat. 1396-50.01, § 30.
 Records and recordation, Civ.Stat. 1396-50.01, § 35.
 Referendum, Civ.Stat. 1396-50.01, § 24.
 Registered agent, Civ.Stat. 1396-50.01, § 7.
 Registered office, Civ.Stat. 1396-50.01, § 7.
 Removal, directors and officers, Civ. Stat. 1396-50.01, § 23.
 Reports,
 Annual reports, Civ.Stat. 1396-50.01, § 36.
 Delinquent reports, notice, Civ.Stat. 1396-50.01, § 37.
 False reports, Civ.Stat. 1396-50.01, § 41.
 Sales, shares, Civ.Stat. 1396-50.01, § 29.
 Savings returns, defined, Civ.Stat. 1396-50.01, § 2.
 Shares and shareholders, Civ.Stat. 1396-50.01, § 28 et seq.
 Signatures, articles of incorporation, Civ. Stat. 1396-50.01, § 8.
 Subscribers, Civ.Stat. 1396-50.01, § 27.
 Taxation, Civ.Stat. 1396-50.01, § 44.
 Telephone cooperative, Civ.Stat. 1528c.
 Term of existence, Civ.Stat. 1396-50.01, § 8.
 Transfers, shares and membership, Civ. Stat. 1396-50.01, § 29.
 Voters and voting, Civ.Stat. 1396-50.01, § 15 et seq.
 Withdrawal, membership, Civ.Stat. 1396-50.01, § 29.

CORPORATE NAME

Name of Corporation, generally, this index.

CORPORATION

Defined, 1.02.

CORRECTIONS

Articles of correction, Civ.Stat. 1302-7.01 et seq.

COSTS

Deposit of costs, shareholders' suits, 5.14.
 Fees of appraisers, valuation of shares of dissenting shareholders, 5.12.

COSTS—Cont'd

Foreign corporations, actions for violation of law, lien on property, Civ. Stat. 1302-5.07 et seq.
 Involuntary dissolution, action for, 7.02.
 Lien against corporate property, fines and penalties, violations of law, Civ. Stat. 1302-5.07 et seq.
 Quo warranto proceedings, dismissal, Civ.Stat. 1302-5.16.
 Valuation of shares, dissenting shareholders, 5.12.

COTTON GINS

Railroads, operation of line to gins, Civ. Stat. 1302-3.05.

COUNTIES

Housing corporations, Civ.Stat. 1524e.

COUNTY ATTORNEYS

Foreclosure of state liens for fines, penalties and forfeitures, Civ.Stat. 1302-5.12.
 Quo warranto, insolvent corporations, Civ.Stat. 1302-5.15.

COURT OF APPEALS

Assistance, audits, Civ.Stat. 1396-2.23B.
 Nonprofit corporations, audits, Civ.Stat. 1396-2.23B.

COURT OF COMPETENT JURISDICTION

Defined, close corporation, 12.51

COURT OF CRIMINAL APPEALS

Assistance, audits, Civ.Stat. 1396-2.23B.
 Nonprofit corporations, audits, Civ.Stat. 1396-2.23B.

COURTS

Appeals from rulings of secretary of state, 9.04.
 Books and records, compelling production, 2.44.
 Dissenting shareholders, valuation of shares, 5.12.
 District Court, generally, this index.
 Equity courts, appointment of receiver, 7.04.
 Foreign corporations,
 Decree filed with secretary of state, 8.17.
 Revocation of certificate, venue, 8.16.
 Receivers, generally, this index.
 Shareholders' meetings, order, 2.24.

CREDITORS

Receivers, this index.
 Rights not impaired by merger or consolidation, 5.06.
 Statement of payment of, application for withdrawal, foreign corporation, 8.14.

CRIMES AND OFFENSES

Generally, Civ.Stat. 1528g.
 Bills of lading, dealing, Civ.Stat. 1528h.

INDEX

270

References are to Articles unless otherwise indicated

CRIMES AND OFFENSES—Cont'd
 Cooperative Associations, this index.
 Felony conviction, involuntary dissolution, 7.01.
 Fines and Penalties, generally, this index.
 Foreign corporations, felony conviction as grounds for revocation of certificate of authority, 8.16.
 Interrogatories propounded by secretary of state, information, use, 9.02.
 Telegraphs and telephones, hostage or armed suspects, Civ.Stat. 1432b.
 Warehouse receipts, dealing, Civ.Stat. 1528h.

CULTURAL CORPORATIONS
 Exemption, 9.14.
 Organization, 2.01.

CULVERTS
 Toll roads, Civ.Stat. 1461.

CUMULATIVE VOTING
 Shareholders' rights, 2.29.

CUSTODIAN
 Close corporation, 12.51 et seq.
 Defined, close corporation, 12.51

CUSTOMERS
 Public utilities, deposits, Civ.Stat. 1440, 1440a.

DAIRIES AND DAIRY PRODUCTS
 Ice companies, Civ.Stat. 1528.
 Nonprofit corporations, Civ.Stat. 1528k.

DAMAGES
 Ferry companies, Civ.Stat. 1477.
 Toll bridge companies, Civ.Stat. 1477.

DAMS AND RESERVOIRS
 Generally, Civ.Stat. 1466 et seq.
 Irrigation corporations, Civ.Stat. 1526.

DE NOVO TRIAL
 Appeal from secretary of state, 9.04.

DEBENTURES
 Bonds, generally, this index.

DEBTS
 Indebtedness, generally, this index.

DECEIT
 Fraud, generally, this index.

DECREES
 Judgments and Decrees, generally, this index.

DEEDS AND CONVEYANCES
 Causeway corporations, Civ.Stat. 1473.
 Married women, rights and liabilities, Civ.Stat. 1302-2.01.
 Nonprofit corporations, Civ.Stat. 1396-5.08.
 Ultra vires, defenses, Civ.Stat. 1396-2.03.

DEEDS AND CONVEYANCES—Cont'd
 Requirements, execution, recording, etc., 5.08.
 Ultra vires as defense, 2.04.

DEEDS OF TRUST
 Enforcement, exclusive right of trustee to sue, Civ.Stat. 1302-2.04.

DEFECTIVE INSTRUMENTS
 Articles of correction, Civ.Stat. 1302-7.01 et seq.

DEFENSES
 Lack of,
 Authority, 2.04.
 Capacity of corporation, 2.04.
 Nonprofit corporations, ultra vires, Civ. Stat. 1396-2.03.
 Ultra vires, 2.04.
 Usury, Civ.Stat. 1302-2.09.

DEFICIT
 Application of capital or reduction surplus to eliminate, 4.13.

DEFINITIONS
 Words and Phrases, generally, this index.

DELEGATION OF POWER
 By-laws, power to alter, amend or repeal, 2.23.

DELIVERY
 Notice of shareholders' meetings, deposit in mail, 2.25.

DEMAND
 Payment of subscription, mailing, 2.14.
 Shareholder, annual meeting on failure of directors to call, 2.24.

DENATURED ALCOHOL MOTOR RAILWAYS
 Incorporation, Civ.Stat. 1302-3.05.

DENTISTS AND DENTISTRY
 Professional corporations, Civ.Stat. 1528e.

DEPLETION RESERVES
 Dividends, consuming assets corporation, 2.39.

DEPOSITARIES
 Redemption price of shares, 4.08.
 Waterworks or water supply, Civ.Stat. 1434a.

DEPOSITS
 Banks and trust companies, payment, redemption of shares, 4.08.
 Costs and expenses, shareholders' suits, 5.14.
 Public utilities, Civ.Stat. 1440, 1440a.

DEPRECIATION
 Dissenting shareholders, valuation of shares, 5.12.

DERIVATIVE SUITS
 Generally, 5.14.

DIPLOMAS AND DEGREES
 Educational corporations, conferring, Civ.Stat. 1302-3.02.

DIRECTORS
 Abandonment of authorized sale, mortgage, etc., outside regular course of business, 5.10.
 Actions without a meeting, 9.10.
 Articles of Incorporation, this index.
 Assent to corporate action, presumption, 2.41.
 Assets,
 Disposition authorized, 5.09.
 Liability for improper distribution of, 2.41.
 Authority, restricted to scope of Act, 2.02.
 Bylaws, this index.
 Classification, staggered terms of office, 2.32, 2.33.
 Close corporation, provisional directors, 12.51 et seq.
 Commencing business before required amount paid in, liability, 2.41.
 Consent, actions without a meeting, 9.10.
 Consolidation, approval of plans for, 5.02.
 Contribution from other directors and shareholders, liability for improper dividends, etc., 2.41.
 Conveyances, resolution authorizing, 5.08.
 Cooperative associations, Civ.Stat. 1396-50.01, § 21.
 Removal, Civ.Stat. 1396-50.01, § 23.
 Deficit, application of surplus to eliminate, 4.13.
 Defined, indemnity, 2.02-1.
 Dissent from action of board, entry in minutes, necessity, 2.41.
 Dissolved corporations, Civ.Stat. 1302-2.07.
 Remedies against directors not impaired, 7.12.
 Distribution of assets before payment of corporate indebtedness, liability, 2.41.
 Dividends, this index.
 Educational corporations, powers and duties, Civ.Stat. 1302-3.02.
 Elections, 2.32.
 Classification, 2.32, 2.33.
 Number, 2.32.
 Shareholders' deadlock, appointment of receiver, 7.05.
 Vacancies, filling, 2.34.
 Voting of shares, 2.29.
 Executive committees, 2.36.
 Actions without a meeting, 9.10.
 Liability of directors not affected by, 2.36.
 Meetings, 9.10.
 Powers and duties, etc., 2.36.
 Removal of member, effect, 2.43.

References are to Articles unless otherwise indicated

DIRECTORS—Cont'd

Fractional shares, issuance, 2.20.
 Illegal, oppressive or fraudulent acts, ground for receivership, 7.05.
 Indemnification, 2.02, 2.02-1.
 Initial board,
 Number fixed by articles, 2.32.
 Statement respecting in articles, 3.02.
 Interrogatories propounded to by secretary of state, 9.01.
 Liability, 2.41.
 Between dissolution and reinstatement, 7.01.
 Loans by corporation to, 2.02.
 Management of corporate affairs, 2.31.
 Deadlock in, ground for receivership, 7.05.
 Executive committee, 2.36.
 Married women, eligibility, Civ.Stat. 1302-2.01.
 Meetings,
 Action without, 9.10.
 Conference telephones or similar means of communication, 9.10.
 Minutes, 2.44.
 Notice, waiver, 2.37.
 Organization, 3.06.
 Place, 2.37.
 Telecommunications, conference telephones or similar means, 9.10.
 Merger, resolution approving plan of, 5.01.
 Names and addresses, initial board, statement in articles, 2.32.
 Nonprofit Corporations, this index.
 Notice to, waiver, 9.09.
 Number,
 Increase or decrease, 2.32.
 Statement respecting initial board in articles, 3.02.
 Officers, employees and agents,
 Authority and duties described by resolution, 2.42.
 Election or appointment, 2.42.
 Removal, 2.43.
 Organization meeting, 3.06.
 Presumption of assent to action of board, exception, 2.41.
 Purchase by corporation of own shares, liability, 2.41.
 Qualifications, 2.31.
 Quorum, 2.35.
 Reduction of stated capital, resolution, 4.12.
 Reliance on book value of assets, attorney's opinion, etc., as defense, 2.41.
 Reorganization proceedings, amendment of articles of incorporation, 4.14.
 Reports of situation and amount of business as basis of dividends, 2.38.
 Reserves, earned surplus, creation or abolition, 4.13.
 Resolutions,
 Adoption of Act within five years, etc., procedure, 9.14.
 Officers and agents, prescribing authority and duty, 2.42.

DIRECTORS—Cont'd

Resolutions—Cont'd
 Purchase of own shares, authority on restrictions, 2.03.
 Reduction of stated capital, 4.12.
 Responsibility of board not relieved by designation of executive committee, 2.36.
 Rights and liabilities after dissolution, 7.12.
 Sale, lease, mortgage, etc., outside regular course of business, abandonment, 5.10.
 Scrip, authority to issue, effect, 2.20.
 Shares and Shareholders, this index.
 Stated capital, increase by resolution, 2.17.
 Statement filed with secretary of state, division of shares into series, etc., 2.13.
 Terms of office, 2.33.
 Classification, 2.32.
 Transfer books, closing and fixing record date, etc., 2.26.
 Vacancies, 2.34.

DISABLED

Use of word in corporate name, Civ.Stat. 1302-3.01.

DISCIPLINE

Students, educational corporations, Civ. Stat. 1302-3.02.

DISCLOSURE

Attorney general, information derived from examination of corporate books and records, Civ.Stat. 1302-5.04.
 Information disclosed by interrogatories propounded by secretary of state, prohibition against, 9.02.

DISCRIMINATION

Electric light and power companies, Civ. Stat. 1438.
 Gas companies, Civ.Stat. 1438.
 Toll roads, Civ.Stat. 1465.

DISMISSAL

Involuntary dissolution, action for, cure by corporation of default, etc., 7.02.
 Quo warranto proceedings, insolvent corporations, Civ.Stat. 1302-5.16.

DISSENTING SHAREHOLDERS

Shares and Shareholders, this index.

DISSOLUTION

Abatement of action by state to recover fines, forfeitures or penalties, Civ. Stat. 1302-5.09.
 Actions and proceedings, Civ.Stat. 1302-2.07.
 Annual meeting of shareholders, failure to hold, effect, 2.24.
 Appeal from ruling of secretary of state, 9.04.

DISSOLUTION—Cont'd

Articles of dissolution. Voluntary dissolution, post.
 Attorney general. Involuntary dissolution, post.
 Certificate of dissolution. Voluntary dissolution, post.
 Close corporation, 12.52
 Continuation of corporate existence for certain purposes, Civ.Stat. 1302-2.07.
 Cooperative associations, Civ.Stat. 1396-50.01, § 38.
 Decrees,
 Filing with secretary of state, 7.10.
 Involuntary dissolution, failure to cure default within time required, 7.02.
 Termination of corporate existence by decree, 6.05.
 Directors, liability between dissolution and reinstatement, 7.01.
 Distribution of assets, shareholder's address unknown, deposit with state treasurer, 7.11.
 Foreclosure of state lien for fines, penalties and forfeitures, Civ.Stat. 1302-5.12.
 Form, articles of dissolution, 6.06.
 Incorporation without change of firm name, filing notice of dissolution, Civ.Stat. 1302-2.02.
 Insolvent corporations, Civ.Stat. 1302-5.14 et seq.
 Involuntary dissolution, 7.01 et seq.
 Abatement of action for, cure of default by corporation before judgment, 7.02.
 Appeal from judgment, 7.02.
 Application for reinstatement, 7.01.
 Articles of incorporation, filing fee, failure to pay, 7.01
 Attorney general,
 Filing suit by, 7.01.
 Default not cured, 7.02.
 Notification to, 7.02.
 Ultra vires as defense, 2.04.
 Certificate of incorporation, effect in proceedings for, 3.04.
 Certification by secretary of state to attorney general of names of corporations in default, 7.02.
 Close corporation, 12.52
 Costs, payment by corporation in action for dissolution after care of defaults, effect, 7.02.
 Crimes and offenses, felony convictions, 7.01.
 Decree of district court, county of registered office, 7.01.
 Default judgment, time of taking in absence of service of citation on corporation, 7.03.
 Dismissal of action for where defaults cured within time specified, 7.02.
 Felony conviction, 7.01.
 Final judgment on failure to cure default, 7.02.

INDEX

272

References are to Articles unless otherwise indicated.

DISSOLUTION—Cont'd

Involuntary dissolution—Cont'd
 Findings of corporation's default pending determination on application for stay, 7.02.
 Grounds, 7.01.
 Mail and mailing, notice, 7.01
 Proceedings to liquidate assets,
 Decree of dissolution, 7.09.
 Filing with secretary of state, 7.10.
 Receiver, appointment, 7.06.
 Reinstatement of corporation, 7.01.
 Remand by appellate court, opportunity to cure default, 7.02.
 Secretary of state, certification to attorney general of names of corporation subject to, 7.02.
 Stay, granting to give opportunity to cure default, 7.02.
 Venue of action for, 7.03.
 Judgments and decrees. Decrees, generally, ante.
 Limited survival after dissolution, Civ. Stat. 1302-2.07.
 Mail and mailing, involuntary dissolution, notice, 7.01
 Nonprofit Corporations, this index.
 Notice,
 Involuntary dissolution, 7.01.
 Voluntary, shareholders, notice of meetings, 6.03.
 Procedure. Voluntary dissolution, post.
 Professional associations, Civ.Stat. 1528f.
 Professional corporations, Civ.Stat. 1528e.
 Receivers, appointment, Civ.Stat. 1302-5.10.
 Reinstatement of corporation, 7.01.
 Remedies, survival after dissolution, 7.11, 7.12.
 Revocation of proceedings. Voluntary dissolution, post.
 Voluntary dissolution, 6.01 et seq.
 Articles of dissolution, 6.06.
 Collection of assets before filing, 6.04.
 Contents, 6.06.
 Directors, dissolution by act of, 6.01.
 Filing, 6.07.
 Filing fee, 10.01.
 Form, 6.06.
 Incorporators, dissolution by act of,
 Contents and requisites of articles, 6.01.
 Filing, 6.01.
 Filing fee, 10.01.
 Procedure after filing, 6.04.
 Certificate of dissolution,
 Directors, act of, effect of issuance, 6.01.
 Incorporators, act of, effect of issuance, 6.01.
 Issuance, effect, 6.07.
 Cessation of business, 6.04.
 Collection of assets,
 After filing of statement of intent to dissolve, 6.06.

DISSOLUTION—Cont'd

Voluntary dissolution—Cont'd
 Collection of assets—Cont'd
 Before filing articles of dissolution, 6.04.
 Corporation's act, procedure, 6.03.
 Creditors, notice of filing of statement of intent, 6.04.
 Directors, dissolution by, 6.01.
 Distribution of assets,
 After filing statement of intent to dissolve, 6.06.
 Before filing articles of dissolution, 6.04.
 Filing of statement of intent, 6.04.
 Form, articles of dissolution, 6.06.
 Incorporators, dissolution by, 6.01.
 Location of dissolution proceedings, 6.05.
 Notice,
 Creditors, filing of statement of intent to dissolve, 6.04.
 Revocation of dissolution proceedings, 6.05.
 Powers of corporation, 2.02.
 Procedure,
 Before filing articles of dissolution, 6.04.
 Directors' acts, 6.01.
 Incorporators' Act, 6.01.
 Shareholders' consent, 6.02.
 Revocation of proceedings, 6.05.
 Filing statement of revocation,
 Filing fee, 10.01.
 Statement of revocation, contents, 6.05.
 Statement of intent to dissolve,
 Appointment of receiver, 7.06.
 Corporation's Act, contents, 6.03.
 Filing, fee, 10.01.
 Shareholders' consent, requisites, contents, etc., 6.02.
 Statement of revocation of proceedings, contents, 6.05.
 Time, act of incorporators or directors, 6.01.
 Winding up, Civ.Stat. 1302-2.07.

DISTRICT ATTORNEYS

Foreclosure of state liens for fines, penalties and forfeitures, Civ.Stat. 1302-5.12.
 Quo warranto, insolvent corporations, Civ.Stat. 1302-5.15.

DISTRICT COURT

Appeals, rulings of secretary of state, 9.04.
 Decree, involuntary dissolution, 7.01.
 Travis county, appeals, rulings of secretary of state, 9.04.

DIVIDENDS

Accrued dividends, cancellation by amendment of articles, 4.01.
 Articles of incorporation, restriction, 2.38.
 Consuming assets corporations, 2.39.

DIVIDENDS—Cont'd

Capital surplus, payment out of, 2.40.
 Consuming assets corporations, 2.39.
 Articles of incorporation, restrictions, 2.39.
 Cooperative associations, limitations, Civ. Stat. 1396-50.01, § 25.
 Cumulative dividends,
 Authorized, 2.12.
 Payment on all classes of stock prerequisite to payment of consuming assets dividends, 2.39.
 Payment prerequisite to partial liquidation distribution, 2.40.
 Declaration, 2.38.
 Directors,
 Declaration by, 2.38.
 Liability for improper declaration or payment, 2.41.
 Contribution from shareholders, 2.41.
 Written report of situation and amount of business as basis for, 2.38.
 Dissenting shareholders, dividends credited on amount to be paid, 5.13.
 Earned surplus, reserve from not available, 4.13.
 Fractional shares, 2.20.
 Insolvency of corporation as affecting declaration, 2.38.
 Joint tenancy, transfer, Civ.Stat. 1358b.
 Merger or consolidation, effect, 5.06.
 Partial liquidation, 2.40.
 Payable in cash, property or shares, etc., 2.38.
 Preference as to, preferred shares, 2.12.
 Reports of directors, as to situation and amount of business as basis, 2.38.
 Reserves, unavailable, 4.13.
 Scrip for fractional shares, 2.20.
 Share dividends,
 Authorized, 2.38.
 Consideration, 2.15.
 Dissenting shares, crediting, 5.13.
 Restrictions as to classes, 2.38.
 Unissued shares, dividends authorized, 2.38.
 Surplus available for payment of, merger or consolidation, 5.06.
 Transfer books, closing and fixing record date, determination of shareholders entitled to dividends, 2.26.

DOMESTIC CORPORATIONS

Defined, 1.02.

DOMICILE AND RESIDENCE

Incorporators, 3.01.

DONATIONS

Power to make for public welfare, charitable, scientific, or educational purposes, 2.02.

DRAINS AND DRAINAGE

Corporations, Civ.Stat. 1525.

DURATION

Articles to set forth, 3.02.

References are to Articles unless otherwise indicated

- DURATION**—Cont'd
Beginning, issuance of certificate of incorporation, 3.04.
Change by amendment of articles, 4.01.
Dissolution,
 Existence continued until certificate of dissolution issued by secretary of state, etc., 6.07.
 Extension of duration after, 7.12.
Perpetual, authorized, 3.02.
Termination of existence, entry of decree of involuntary dissolution, 7.09.
- EARNED SURPLUS**
Surplus, this index.
- EDUCATION**
Nonprofit Corporations, generally, this index.
- EDUCATIONAL CORPORATIONS**
Exemption, 9.14.
Organization, 2.01.
Powers in general, Civ.Stat. 1302-3.02.
- ELECTIONS**
Adoption of Act, presumptions, 9.14.
Cooperative associations, directors, actions, Civ.Stat. 1396-50.01, § 24.
Directors, this index.
Nonprofit corporations, Civ.Stat. 1396-2.15.
Directors, Civ.Stat. 1396-2.15, 1396-2.16.
- ELECTRIC COOPERATIVE CORPORATIONS**
Generally, Civ.Stat. 1528b.
- ELECTRIC LIGHT AND POWER COMPANIES**
Generally, Civ.Stat. 1435 et seq.
Disruption, picketing, threats or intimidation, Civ.Stat. 1446a.
High voltage lines, safety, Civ.Stat. 1436c.
Meters, apartment houses or condominiums, Civ.Stat. 1446d.
- ELECTRIC RAILROADS**
Incorporation, Civ.Stat. 1302-3.05.
- ELEEMOSYNARY**
Nonprofit Corporations, generally, this index.
- EMERGENCIES**
Telephones, 911, Civ.Stat. 1432c.
Party lines, Civ.Stat. 1432a.
- EMINENT DOMAIN**
Causeways, Civ.Stat. 1469.
Sewage systems, Civ.Stat. 1439.
Telegraph and telephones, Civ.Stat. 1417.
Toll roads, Civ.Stat. 1463.
Waste water corporations, Civ.Stat. 1510.
Water companies, Civ.Stat. 1433.
- EMPLOYEES**
Officers, Employees and Agents, generally, this index.
- ENGLISH LANGUAGE**
Foreign corporations, certificate of authority, language other than, 8.06.
- ERRORS**
Articles of correction, Civ.Stat. 1302-7.01 et seq.
- ESCHEAT**
Funds of dissolved or liquidated corporation, 7.11.
- ESCROWS**
Shares and shareholders, distribution, Civ.Stat. 1358a.
- EVIDENCE**
Admissibility, certificates and certified copies issued by secretary of state, 9.05.
Foreign corporations, certificate of authority as conclusive, 8.07.
Nonprofit corporations, certificates and documents, Civ.Stat. 1396-9.06.
Prima Facie Evidence, generally, this index.
- EVIDENCES OF INDEBTEDNESS**
Facsimile signatures and seal, Civ.Stat. 1302-2.05.
Interest, Civ.Stat. 1302-2.09.
- EXAMINATIONS**
Toll roads, articles of incorporation, Civ. Stat. 1450.
- EXCEPTIONS**
Report of appraiser, valuation of shares of dissenting shareholders, 5.12.
Shares and shareholders, articles of incorporation, limitation or denial of voting rights, 4.03.
- EXCHANGE**
Shares and Shareholders, this index.
- EXCHANGE OF PROPERTY**
Outside regular course of business, 5.10.
Regular course of business, 5.09.
Shareholders, right to dissent, 5.11.
Within or without regular course of business, 5.09, 5.10.
- EXECUTIVE COMMITTEES**
Directors, this index.
- EXECUTORS AND ADMINISTRATORS**
Foreign corporations exercising power of under ancillary letters, transacting business in state, 8.01.
Liability as shareholder or subscriber, 2.21.
Voting shares held by, 2.29.
- EXEMPTIONS**
Nonprofit Corporations, this index.
- EXISTENCE OF CORPORATION**
Duration, generally, this index.
- EXISTING LAWS**
Continued application to existing corporations, 9.15.
Repeal, extent and effect, 9.16.
- EXPENSES AND EXPENDITURES**
Defined,
 Derivative suits, 5.14.
 Indemnity, 2.02-1.
Derivative suits, 5.14.
Dissenting shareholders,
 Deposit securing, 5.14.
 Right to recover on corporation's abandonment of proposed action, 5.13.
Financing, 2.18.
Organization, 2.18.
Reorganization, 2.18.
- EXPULSION**
Students, educational corporations, Civ. Stat. 1302-3.02.
- EXTENSION**
Duration, extension after dissolution, 7.12.
Time for filing creditors' claims, receivership, 7.07.
- FACSIMILE**
Signatures and seals, 2.02, 2.19; Civ. Stat. 1302-2.05.
- FALSE REPRESENTATION**
Fraud, generally, this index.
- FEED LOTS**
Owning and operating, not engaging in business of raising cattle and owning land therefor, 2.01.
- FEES**
Annual report, filing, 9.14.
Appraisers, valuation of shares of dissenting shareholder, 5.12.
Articles of correction, Civ.Stat. 1302-7.05.
Attorneys, this index.
Certificates of correction, Civ.Stat. 1302-7.05.
Dissolution,
 Failure to pay, 7.01.
 Reinstatement following involuntary dissolution, 7.01.
Filing fees, enumeration, 10.01.
Foreign corporations,
 Failure to pay, ground for revocation of certificate, 8.16.
 Filing fees, 10.01.
Housing corporations, Civ.Stat. 1524d.
Reinstatement of corporations,
 Foreign corporations, revocation of certificate of authority, 8.16.

INDEX

274

References are to Articles unless otherwise indicated

FEES—Cont'd

Reinstatement of corporations—Cont'd
Involuntarily dissolved corporation,
7.01.

FELONIES

Crimes and Offenses, generally, this index.

FENCES

Toll roads, Civ.Stat. 1458, 1460.

FICTITIOUS NAME

Foreign corporation, 8.03.

FIDUCIARIES

Liability as shareholder or subscriber,
2.21.

Voting shares held by, 2.29.

FILING

Amendments. Articles of Incorporation,
this index.

Applications,

Certificate of authority or renewal
thereof, 8.06.

Reinstatement,

Following voluntary dissolution,
7.01.

Foreign corporation, 8.16.

Reserved name, 2.06.

Withdrawal, foreign corporation, 8.15.

Articles of amendment, 4.05.

Incorporators, requirements, 4.04.

Articles of correction, Civ.Stat.

1302-7.01 et seq.

Articles of dissolution, voluntary dissolution,
6.07.

Incorporators, 6.01.

Articles of incorporation, 3.03.

Amendments, incorporators, require-
ments, 4.04.

Foreign corporations, 8.06.

Articles of merger or consolidation, 5.04.

Subsidiary into parent corporation,
5.16.

Assumed name certificate, 2.05.

Certified copy, decree of dissolution,
7.10.

Claims of creditors, receivership, time
for and extension, 7.07.

Close corporation, termination statement,
12.22.

Decree of revocation, certificate of au-
thority, foreign corporation, 8.17.

Documents with secretary of state, time
for, 9.07.

Fees,

Enumeration, 10.01.

Reinstatement following voluntary dis-
solution, 7.01.

Foreign Corporations, this index.

Nonprofit Corporations, this index.

Notice of transfer, reserved name, 2.06.

Petition, dissenting shareholder, appraisal
and valuation of shares, etc., 5.12.

Registered name, 2.07.

Resignation of registered agent, 2.10.

FILING—Cont'd

Statements, this index.

Time,

Creditors' claims, receivership, exten-
sion of time, 7.07.

Documents, secretary of state, 9.07.

FINANCIAL STATEMENTS

Consuming assets corporation, dividends,
2.39.

Director's reliance on, defense to liabili-
ty, 2.41.

Shareholders, availability, 2.44.

Surplus or net assets, 2.17.

FINANCING

Charges and expenses, 2.18.

FINDINGS

Pending filing and action on application
for stay for corporation's default,
involuntary dissolution, 7.02.

FINES AND PENALTIES

See, also, Crimes and Offenses, gener-
ally, this index.

Abatement of action by state to recover,
Civ.Stat. 1302-5.09.

Annual report, failure to file, 9.14.

Books and records, refusal to allow
shareholder to examine, 2.44.

Charitable organizations and societies,
contributions, Civ.Stat. 1351.

Cooperative Associations, this index.

Directors, indemnification, 2.02-1.

Foreclosure of state liens for fines and
penalties, Civ.Stat. 1302-5.12.

Foreign Corporations, this index.

Forfeitures, generally, this index.

Housing corporations, Civ.Stat. 1524k.

Liens against corporate property, Civ.
Stat. 1302-5.07 et seq.

Receivers, appointment, pending action
to recover, Civ.Stat. 1302-5.10.

Refusal to permit inspection of corporate
books and records, Civ.Stat.
1302-5.05.

Repeal of prior laws, effect, 9.16.

Telegraphs and telephones, message
transfers, Civ.Stat. 1431, 1432.

FORECLOSURE

Lien of state for fines, penalties and
forfeitures, Civ.Stat. 1302-5.12.

Mortgages, receiver, appointment, 7.04.

FOREIGN

Use of word in corporate name, Civ.Stat.
1302-3.01.

FOREIGN COMMERCE

Application of Act to, 9.11.

FOREIGN CORPORATIONS

Generally, 8.01 et seq.

Acknowledgments, articles of correction,
Civ.Stat. 1302-7.01 et seq.

FOREIGN CORPORATIONS—Cont'd

Actions and proceedings,

Maintaining or defending, etc., as not
transacting business within state,
8.01.

Revocation of certificate, 8.16.

Transacting business without certifi-
cate, effect on right to maintain
or defend action, 8.18.

Violation of law, lien on property, Civ.
Stat. 1302-5.07 et seq.

Activities and purposes authorized, 8.01.

Admission to transact business, 8.01.

Affidavit, certificate of authority, Civ.
Stat. 1302-2.08.

Affiliated corporations, indebtedness, lia-
bility, Civ.Stat. 1302-2.06.

Ancillary receivers, appointment, etc.,
7.07.

Application of Act, adoption within five
years, procedure, etc., 9.14.

Articles of incorporation,

Amendments,

Failure to file, ground for revocation
of certificate, 8.16.

Filing, 10.01.

With certificate of authority, etc.,
8.06.

Restated articles, filing fee, 10.01.

Assumed name, 8.03.

Bank accounts, 8.01.

Books and papers, examination by attor-
ney general, Civ.Stat. 1302-5.01 et
seq.

Borrowing money, Civ.Stat. 1302-2.09.

Certificates of authority,

Affidavit, Civ.Stat. 1302-2.08.

Amendments,

Application for,

Contents, 8.13.

Filing fee, 10.01.

Filing fee, 10.01.

Issuance, effect, etc., 8.13.

Application for certificate or renewal,
8.05.

Appeal from failure to approve by
secretary of state, 9.04.

Filing, 8.06.

Assumed name, 8.03.

Certificate of revocation, 8.16.

Delivery to corporation or representa-
tive thereof, 8.06.

Denial on certain grounds as not valid,
8.01.

Duration, 8.02.

Term of, 8.07.

Effect of issuance, 8.07.

English language, language other than,
8.06.

Felony convictions, revocation, 8.16.

Filing,

Amended certificate, 8.13.

Fees, 10.01.

Forms, application for certificate or re-
newal, 8.05.

Insolvent corporations, Civ.Stat.

1302-5.14 et seq.

References are to Articles unless otherwise indicated

FOREIGN CORPORATIONS—Cont'd
 Certificates of authority—Cont'd
 Issuance, 8.06.
 Prerequisites, 8.03.
 Language other than English, 8.06.
 Mail and mailing, revocation, 8.16.
 Name change, amended certificate, 8.13.
 Necessity of, 8.01, 8.13.
 Purposes authorized, change of, amendment of certificate required, 8.13.
 Reinstatement following revocation, 8.16.
 Renewal,
 Filing fee, application for renewal, 10.01.
 Revocation, 8.16.
 Certification by attorney general to secretary of state, 7.02.
 Decree of revocation, filing with secretary of state, 8.17.
 Felony convictions, 8.16.
 Grounds for enumerated, 8.16.
 Notice, 8.16.
 Reinstatement, 8.16.
 Venue of action for, 7.03.
 Transacting business in Texas, activities not constituting, 8.01.
 Transacting business without certificate, 8.18.
 Certificates of withdrawal, issuance, effect, 8.14.
 Change of name, 8.04.
 Charities, contributions, Civ.Stat. 1349.
 Fines and penalties, Civ.Stat. 1351.
 Consolidation. Merger and Consolidation, this index.
 Conspiracy, liens against property, Civ. Stat. 1302-5.07 et seq.
 Contracts in restraint of trade, liens, Civ. Stat. 1302-5.07 et seq.
 Contributions, charities, Civ.Stat. 1349, 1351.
 Cooperative associations, Civ.Stat. 1396-50.01, § 43.
 Corrections, articles of correction, Civ. Stat. 1302-7.01 et seq.
 Costs, actions for violation of law, lien on property, Civ.Stat. 1302-5.07 et seq.
 Crimes and offenses, felony conviction as grounds for revocation of certificate of authority, 8.16.
 Defined, 1.02.
 Directors, meetings as not transacting business within state, 8.01.
 Dissolution, termination, certificate of withdrawal, 8.14.
 Duties, 8.02.
 Election to adopt provisions of Act, presumption as to, etc., 9.14.
 Errors, articles of correction, Civ.Stat. 1302-7.01 et seq.
 Fees, filing fees, 10.01.
 Felony conviction as grounds for revocation of certificate of authority, 8.16.

FOREIGN CORPORATIONS—Cont'd
 Fictitious name, 8.03.
 Filing,
 Application,
 Certificate of authority or renewal, 8.06.
 Reinstatement, 8.16.
 Assumed name certificate, 8.03.
 Certificate of authority, amended certificate, 8.13.
 Certificate of withdrawal, 8.14.
 Fines and penalties, 8.02.
 Certificate of authority, revocation, 8.16.
 Charitable contributions, Civ.Stat. 1351.
 Inspection of records, refusal to permit, Civ.Stat. 1302-5.05.
 Lien on property, Civ.Stat. 1302-5.07 et seq.
 Forfeitures,
 Inspection of records, refusal to permit, Civ.Stat. 1302-5.05.
 Lien on property, Civ.Stat. 1302-5.07 et seq.
 Fraud, certificate of authority procured through, ground for revocation, 8.16.
 Guarantee, indebtedness of subsidiary, etc., Civ.Stat. 1302-2.06.
 Indebtedness,
 Affiliated corporations, liability, Civ. Stat. 1302-2.06.
 Consideration, Civ.Stat. 1302-2.06.
 Subsidiary corporation, liability, Civ. Stat. 1302-2.06.
 Insolvent corporations, Civ.Stat. 1302-5.14 et seq.
 Interest, loans, rate, Civ.Stat. 1302-2.09A.
 Internal affairs as not regulated by Act, 8.01.
 Interstate commerce, transacting business in state, 8.01.
 Investing in nonoperating mineral interest, 8.01.
 Isolated transaction, 8.01.
 Language other than English, certificate of authority, 8.06.
 Liens, violations of law, Civ.Stat. 1302-5.07 et seq.
 Loans, Civ.Stat. 1302-2.09.
 Rate, Civ.Stat. 1302-2.09A.
 Mail and mailing, certificate of authority, revocation notice, 8.16.
 Management and control of Texas corporation, rights as stockholder, 2.29.
 Meetings, directors or shareholders, transacting business within state, 8.01.
 Merger and Consolidation, this index.
 Misrepresentation of material matter in documents, ground for revocation of certificate, 8.16.
 Monopolies, violation of law, liens, Civ. Stat. 1302-5.07 et seq.

FOREIGN CORPORATIONS—Cont'd
 Mortgages, indebtedness of subsidiary, etc., liability for, Civ.Stat. 1302-2.06.
 Name of corporation,
 Application for certificate of authority to set out, 8.05.
 Application for withdrawal from state to set forth, 8.14.
 Assumed name, 8.03.
 Change of, 8.04.
 Amended certificate, 8.13.
 Failure to file, ground for revocation of certificate, 8.16.
 Deceptively similar to name of domestic corporation, etc., prohibited, 8.03.
 Fictitious name, 8.03.
 Registered name, generally, post.
 Reserved name, application, 8.04.
 Statement changing required to set forth, 8.09.
 Words required to be used in, 8.03.
 Nonprofit Corporations, this index.
 Notice,
 Resignation of registered agent, 8.09.
 Revocation of certificate of authority, 8.16.
 Withdrawal of registration of name, 2.07.
 Offices and agents, service of process, 8.10.
 Permits, assumed name, doing business in state, 8.03.
 Pledges of property, indebtedness of subsidiary, etc., Civ.Stat. 1302-2.06.
 Political contributions, Civ.Stat. 1349, 1351.
 Powers, 8.02.
 Process,
 Secretary of state as agent for service, 8.10.
 Fees, maintaining records, 10.01.
 Returnable, when, 8.10.
 Service on,
 Officers and agents of corporation, 8.10.
 Registered agent, 8.10.
 Quo warranto, insolvent corporations, Civ.Stat. 1302-5.14 et seq.
 Rates and charges, interest, Civ.Stat. 1302-2.09A.
 Real property,
 Liens for violation of law, Civ.Stat. 1302-5.07 et seq.
 Receivers, appointment, 7.07.
 Records, examination by attorney general, Civ.Stat. 1302-5.01 et seq.
 Registered agent,
 Change of, 8.09.
 Address, 2.10-1.
 Filing statement, filing fee, 10.01.
 Failure to appoint or maintain,
 Ground for revocation of certificate, 8.16.
 Secretary of state as agent for process, etc., 8.10.

References are to Articles unless otherwise indicated

FOREIGN CORPORATIONS—Cont'd

Registered agent—Cont'd
 Necessity of maintaining, 8.08.
 Resignation, 8.09.
 Revocation of authority, statement in application for withdrawal, 8.14.
 Service of process on, 8.10.
 Registered name,
 Application for registration, 2.07.
 Assumed name, 8.03.
 Certificate, filing with secretary of state, 2.07.
 Fee, paying to secretary of state, 2.07.
 Filing fee, 10.01.
 Method of registration, 2.07.
 Registration, effective period, 2.07.
 Renewal, application for,
 Filing, 2.08.
 Filing fee, 10.01.
 Right to, 2.07.
 Withdrawal, 2.07.
 Registered office,
 Change of, 8.09.
 Address, 2.10-1.
 Filing fee, 10.01.
 Necessity of maintaining, 8.08.
 Reserved name, 2.06.
 Application to secretary of state for, etc., 8.04.
 Restated articles, filing fee, 10.01.
 Restraint of trade, liens, Civ.Stat. 1302-5.07 et seq.
 Revocation. Certificates of authority, ante.
 Seal, articles of correction, Civ.Stat. 1302-7.01 et seq.
 Service of process, 8.10.
 Shareholders, meetings, transacting business within state, 8.01.
 Statements,
 Change of registered office or registered agent, requisites, etc., 8.09.
 Registered agent, change of address, 2.10-1.
 Subsidiaries, indebtedness, liability, Civ. Stat. 1302-2.06.
 Supplement to articles of incorporation, filing fee, 10.01.
 Termination, certificate of withdrawal, filing, 8.14.
 Transacting business in Texas,
 Activities not constituting, 8.01.
 Admission, 8.01.
 Statement negating in application for certificate of withdrawal, 8.14.
 Termination of authority, issuance of certificate of withdrawal, 8.14.
 Venue,
 Action for revocation of certificate of authority, 7.03.
 Revocation of certificate of authority, 8.16.
 Verification, articles of correction, Civ. Stat. 1302-7.01 et seq.
 Voting shares in Texas corporation, 2.29.

FOREIGN CORPORATIONS—Cont'd

Withdrawal from state, 8.14, 8.15.
 Application for withdrawal,
 Contents, 8.14.
 Filing, 8.15.
 Filing fee, 10.01.
 Forms promulgated by secretary of state, execution, 8.14.
 Certificate of withdrawal, 8.14.
 Registered agent, revocation of authority, 8.14.
 Secretary of state, agent for service of process, etc., 8.14.

FOREIGN TRADE ZONES

Generally, Civ.Stat. 1446.1 et seq.
 International commerce development corporation, Civ.Stat. 1527a.

FORESTS AND FORESTRY

Nonprofit corporations, Civ.Stat. 1528k.

FORFEITURES

Abatement of action by state to recover, Civ.Stat. 1302-5.09.
 Charters, this index.
 Foreign corporations, transacting business without certificate, 8.18.
 Liens against corporate property, Civ. Stat. 1302-5.07 et seq.
 Nonprofit corporations, reports, failure to file, Civ.Stat. 1396-9.02.
 Receivers, appointment, Civ.Stat. 1302-5.10.
 Refusal to permit inspection of corporate books and records, Civ.Stat. 1302-5.05.
 Subscriptions to shares, default in payment, 2.14.
 Watered stock, Civ.Stat. 1353.

FORMS

Articles of dissolution, 6.06.
 Nonprofit corporations, Civ.Stat. 1396-9.07.
 Secretary of State, this index.

FRACTIONAL SHARES

Certificates, issuance, 2.20.
 Purchase of own shares to eliminate, 2.03.

FRANCHISE TAXES

Annual report, 9.14.
 Benevolent societies, exemption, Civ.Stat. 1407.
 Dissolution for failure to pay, 7.01.
 Foreign corporations,
 Failure to pay, ground for revocation of certificate, 8.16.
 Liability for, transacting business without certificate, 8.18.
 Secretary of state, certification to attorney general of corporations failing to pay, 7.02.

FRATERNAL CORPORATIONS

Exemption, 9.14.
 Organization, 2.01.

FRAUD

Articles or amendments procured by fraud, ground for dissolution, 7.01.
 Documents submitted, dissolution in material matter, ground, 7.01.
 Foreign corporations, certificate of authority or amendment procured by fraud, ground for revocation, 8.16.
 Receivers, fraudulent purchase of property by corporation, 7.04.
 Revocation of certificate resulting from, in documents, etc., 8.16.
 Telegraphs and telephones, Civ.Stat. 1446b.

FUNDS

Power to invest and reinvest, 2.02.

GARNISHMENT

Liens against corporate property for violations of law, Civ.Stat. 1302-5.11.

GAS OR GASOLINE MOTOR RAILWAYS

Incorporation, Civ.Stat. 1302-3.05.

GAS PLANTS OR SYSTEMS

Generally, Civ.Stat. 1435 et seq., 1446e.
 Disruption, picketing, threats or intimidation, Civ.Stat. 1446a.

GENERAL REVENUE FUND

Escheat, distributive share of unknown shareholders on dissolution, 7.11.

GIFTS

Corporate gifts for charitable purposes, etc., 2.02.

GOODS, WARES AND MERCHANDISE

Cooperative Associations, generally, this index.

GRAND LODGES

Incorporation, Civ.Stat. 1399 et seq.

GRANDFATHER RIGHTS

Lodges, Civ.Stat. 1406.

GUARANTIES

Corporations, liability for indebtedness of parent, subsidiary or affiliated corporation, Civ.Stat. 1302-2.06.

GUARDIAN AND WARD

Liability as shareholder or subscriber, 2.21.
 Voting, shares held by, 2.29.

HEALTH FACILITIES NONPROFIT DEVELOPMENT CORPORATION

Generally, Civ.Stat. 1528j.

HIGHWAYS

Roads and Highways, generally, this index.

INDEX

References are to Articles unless otherwise indicated

HOSTAGES

Telephone lines, Civ.Stat. 1432b.

HOUSING CORPORATIONSGenerally, Civ.Stat. 1524b et seq.
Limited dividend housing corporations,
Civ.Stat. 1528a.**HOUSING LAW**

Generally, Civ.Stat. 1528a.

HUSBAND AND WIFECorporate shareholders and officers,
married woman, eligibility, Civ.Stat.
1302-2.01.**ICE COMPANIES**

Generally, Civ.Stat. 1528.

INACCURATE INSTRUMENTSArticles of correction, Civ.Stat.
1302-7.01 et seq.**INCENTIVE PLANS**

Power to establish, 2.02.

INCORPORATIONBeneficial societies, Civ.Stat. 1399 et
seq.
Certificates of incorporation, 3.03.
Conclusiveness of evidence of, 3.04.
Effect of issuance, 3.04.
Filing fee, 10.01.
Housing corporations, Civ.Stat. 1524c.**INCORPORATORS**Generally, 3.01.
Articles of incorporation,
Amendment, 4.02.
Executing and delivering duplicate to
secretary of state, 3.01.
Call, organization meeting of directors,
3.06.
Dissolution, generally, this index.
Names and addresses stated in articles,
3.02.
Notice, organization meeting of directors,
3.06.
Power to become incorporator of another
corporation, 2.02.
Qualifications, 3.01.**INDEBTEDNESS**Condition precedent to incurring, 3.05.
Consideration for corporate indebtedness,
Civ.Stat. 1302-2.06.
Convertible indebtedness, 2.14-1.
Dismissal of insolvency action, payment
of indebtedness, Civ.Stat. 1302-5.16.
Dissolution, payment of debts, 6.01,
6.06.
Foreign Corporations, this index.
Insolvent corporations, Civ.Stat.
1302-5.15.
Interest, Civ.Stat. 1302-2.09.
Liability for indebtedness of parent, sub-
sidiary or affiliated corporation, Civ.
Stat. 1302-2.06.
Merger or consolidation, effect, 5.06.**INDEBTEDNESS—Cont'd**Nonprofit corporations, personal liabili-
ties, Civ.Stat. 1396-2.08.
Ostensible corporations, enforcement,
Civ.Stat. 1302-2.03.
Powers in general, 2.02; Civ.Stat.
1302-2.09.
Receivers, collection of outstanding
debts, Civ.Stat. 1302-5.15.**INDEMNITY**Directors, officers, employees and agents,
2.02, 2.02-1.**INDENTURES**Enforcement, exclusive right of trustee to
sue, Civ.Stat. 1302-2.04.**INDEPENDENT ORDER OF ODD
FELLOWS**

Incorporation, Civ.Stat. 1399 et seq.

INJUNCTIONClose corporation, 12.52.
Cooperative associations, names, Civ.
Stat. 1396-50.01, § 39.
Housing corporations, Civ.Stat. 1524k.
Liens against corporate property for vio-
lations of law, Civ.Stat. 1302-5.11.
Ultra vires acts, 2.04.**INSOLVENCY**Cumulative remedies, Civ.Stat.
1302-5.19.
Defined, 1.02.
Directors, liability for certain acts
causing, etc., 2.41.
Dividends, limitation,
Declaration of, 2.38, 2.39.
Partial liquidation dividend, 2.40.
Forfeiture of corporate charter or per-
mit, Civ.Stat. 1302-5.14 et seq.
Nonprofit corporations,
Assets, wrongful distribution, Civ.Stat.
1396-2.26.
Defined, Civ.Stat. 1396-1.02.
Purchase of own shares precluded, 2.03.
Quo warranto proceedings, Civ.Stat.
1302-5.14 et seq.
Receivers, appointment, 7.05.
Notice, Civ.Stat. 1302-5.18.
Redemption or purchase of shares, limi-
tation, 4.09.**INSPECTION AND INSPECTORS**Books and records by shareholders, 2.44.
Interrogatories, information disclosed by,
9.02.
Nonprofit corporations, financial records
and reports, Civ.Stat. 1396-2.23A.
Voting list, shareholder's right of inspec-
tion, 2.27.
Voting trusts, shareholder's right of in-
spection, 2.30.**INSURANCE**Cooperative associations, exemption, Civ.
Stat. 1396-50.01, § 6.**INSURANCE—Cont'd**Exemptions, 9.14.
Nonprofit corporations, Civ.Stat.
1396-2.01.
Officers and employees, liability insur-
ance, ability to purchase, 2.02,
2.02-1.**INTEREST**Agricultural credit corporations, Civ.Stat.
1302-2.10.
Indebtedness of corporation, Civ.Stat.
1302-2.09.
Rate, Civ.Stat. 1302-2.09A.
Rates and charges, Civ.Stat. 1302-2.09A.
Usury, defense, Civ.Stat. 1302-2.09.
Valuation of shares, dissenting sharehold-
ers, payment, etc., 5.12.**INTERNATIONAL COMMERCE DE-
VELOPMENT CORPORATIONS**

Generally, Civ.Stat. 1527a.

**INTERNATIONAL TRADING CORPO-
RATIONS**

Generally, Civ.Stat. 1527.

INTERROGATORIESInformation disclosed by, confidential
nature of, 9.02.
Secretary of state, authorized to pro-
pound to corporations, directors,
and officers, etc., 9.01.**INTERSTATE AND FOREIGN COM-
MERCE**Application of Act, 9.11.
Telegraphs and telephones, Civ.Stat.
1419.**INTERURBAN RAILROADS**Incorporation, purposes, Civ.Stat.
1302-3.05.**INTERVENTION**

Close corporation, 12.51.

INTIMIDATIONGas, electric or water service, disruption,
Civ.Stat. 1446a.**INVALIDITY OF ACT**Partial invalidity as not impairing valid
portion, 9.13.**INVESTMENT SECURITIES**Restrictions on transfer of shares and
pre-emptive rights, effect on Invest-
ment Securities Law, 2.22.
Uniform commercial code, 2.22.**INVESTMENTS**Foreign corporations, investing in nonop-
erating mineral interests, transacting
business, 8.01.
Mutual Trust Investment Companies,
Civ.Stat. 1528i.
Nonprofit corporations, funds, Civ.Stat.
1396-2.02.
Power to invest and reinvest funds, 2.02.

INDEX

278

References are to Articles unless otherwise indicated

INVOLUNTARY DISSOLUTION

Dissolution, this index.

IRRIGATION CORPORATIONS

Generally, Civ.Stat. 1526.

ISSUED SHARES

Defined, Civ.Stat. 1302-1.02.
Redemption or purchase, statement of cancellation, requisites, 4.10.
Treasury shares as, 1.02.

JOINT TENANCY

Shares and shareholders, title transfer, Civ.Stat. 1358b.

JOINT VENTURES

Power to join, 2.02.

JUDGMENTS AND DECREES

Citation by publication, default judgment, involuntary dissolution, 7.03.
Directors, indemnification, 2.02-1.
Dissolution, this index.
Fair value of shares, dissenting shareholders, etc., 5.12.
Liquidation of assets, involuntary dissolution, 7.09.
Nonprofit Corporations, this index.
Revocation, certificate of authority, foreign corporation, filing with secretary of state, 8.17.

KNIGHTS TEMPLAR

Incorporation, Civ.Stat. 1399 et seq.

LABOR AND EMPLOYMENT

Educational corporations, Civ.Stat. 1302-3.02.

LABOR UNIONS

Exemption, 9.14.
Organization, 2.01.

LACES

Causeways, Civ.Stat. 1471, 1472.

LAND

Real Property, generally, this index.

LANGUAGE

Foreign corporations, certificate of authority, 8.06.

LEASES

Outside regular course of business, 5.10.
Regular course of business, 5.09.
Shareholders, right to dissent, 5.11.
Within or without regular course of business, 5.09, 5.10.

LEGION

Use of word in corporate name, Civ.Stat. 1302-3.01.

LEGISLATURE

Assistance, audits, Civ.Stat. 1396-2.23B.
Nonprofit corporations, audits, Civ.Stat. 1396-2.23B.
Reservation of power, 9.12.

LIABILITIES

See, also, specific heads.
Directors, liability between dissolution and reinstatement, 7.01.
Repeal of prior Acts, effect, 9.16.
Special liabilities applicable to particular kinds of corporations, continue to apply, 9.15.

LIABILITY INSURANCE

Officers, employees and agents, power of corporation to purchase, 2.02.

LICENSES

Necessity of obtaining to carry on activities, 2.01.

LIENS AND INCUMBRANCES

Lien against corporate property for fines, penalties and forfeitures, Civ.Stat. 1302-5.07 et seq.

LIGHT AND POWER COMPANIES

Electric Light and Power Companies, generally, this index.

LIMITED COOPERATIVE ASSOCIATIONS

Exemption, 9.14.
Organization, 2.01.

LIMITED DIVIDEND HOUSING CORPORATIONS

Generally, Civ.Stat. 1528a.

LIQUIDATION

See, also,
Dissolution, generally, this index.
Receivers, generally, this index.
Assets, this index.
Close corporation, 12.52.
Continuation of corporate existence for certain purposes, Civ.Stat. 1302-2.07.
Dissolution, generally, this index.
Insolvent corporations, Civ.Stat. 1302-5.14 et seq.
Limited survival after liquidation, Civ. Stat. 1302-2.07.
Partial liquidation, generally. Dividends, this index.
Proceedings for liquidation of assets, 7.06 et seq.

LOANS

Benevolent societies, Civ.Stat. 1404.
Electric light and power companies, Civ. Stat. 1437.
Employees, officers and directors, 2.02.
Foreign corporations, Civ.Stat. 1302-2.09.
Rate, Civ.Stat. 1302-2.09A.
Gas companies, Civ.Stat. 1437.
Housing corporations, Civ.Stat. 1524i.
Interest, Civ.Stat. 1302-2.09.
Rate, Civ.Stat. 1302-2.09A.
Lodges, Civ.Stat. 1404.
Officers and directors, liability of directors for making loans to, 2.41.

LOANS—Cont'd

Power to make, corporate purposes, 2.02; Civ.Stat. 1302-2.09.
Rate, Civ.Stat. 1302-2.09A.

LODGES

Franchise taxes, exemption, Civ.Stat. 1407.

LOW-INCOME FAMILIES

Housing corporations, Civ.Stat. 1524b et seq.

MAIL

Cooperative associations, votes, Civ.Stat. 1396-50.01, § 18.
Dissolution, notice, 7.01.
Notice of shareholders' meetings, 2.25.

MANAGEMENT

Close corporation, 12.31, 12.37.

MANDATORY

Forms promulgated by secretary of state, 9.06.

MANUFACTURERS AND MANUFACTURING

Railroads, operation of line, Civ.Stat. 1302-3.05.

MAPS AND PLATS

Causeways, Civ.Stat. 1467, 1468.

MASONIC SOCIETIES

Incorporation, Civ.Stat. 1399 et seq.

MEDICAL ATTENDANCE AND TREATMENT

Telephone calls, emergencies, Civ.Stat. 1432a.

MEETINGS

Cooperative Associations, this index.
Directors, this index.
Nonprofit Corporations, this index.
Shares and Shareholders, this index.

MERCANTILE ESTABLISHMENTS AND COMPANIES

Incorporation without change of firm name, notice, Civ.Stat. 1302-2.02.

MERGER AND CONSOLIDATION

Generally, 5.07.
Abandonment under plan, 5.03.
Appeal, ruling of secretary of state, 9.04.
Approval, number of votes required, 5.03.
Articles of incorporation, amendments resulting, 5.06.
Articles of merger and consolidation, Articles of incorporation supplanted by, 5.06.
Contents and requisites, 5.04.
Filing fee, 10.01.
Certificates, 5.04.
Filing fee, 10.01.
Class voting required, 5.03.

References are to Articles unless otherwise indicated

MERGER AND CONSOLIDATION

—Cont'd
 Close corporation, 12.13.
 Termination, 12.21.
 Conversion, shares, etc., 5.01, 5.02.
 Directors, resolutions submitting plan to shareholders, 5.03.
 Dissenting shareholders. Shares and Shareholders, this index.
 Earned surplus, allocation from capital surplus, 2.17.
 Effect, 5.06.
 Effective date, 5.05.
 Filing fees, 10.01.
 Foreign corporations, 5.07.
 Subsidiary into parent corporation, 5.16.
 Termination, certificate of withdrawal, 8.14.
 Liability, 5.10.
 New corporation, 5.02.
 Liability and obligations, 5.06.
 Plan to designate names, etc., 5.02.
 Provision for in plan, 5.06.
 Nonprofit Corporations, this index.
 Notice, shareholders' meeting to vote on issue, 5.03.
 Parent and subsidiary, 5.16.
 Plan, contents and requisites, 5.01, 5.02.
 Privileges and immunities, 5.10.
 Procedure, 5.01, 5.02.
 Approval by shareholders, 5.03.
 Rights and liabilities of surviving corporation, 5.06.
 Secretary of state ruling, appeal, 9.04.
 Shares and Shareholders, this index.
 Stated capital, 2.17.
 Subsidiary into parent corporation, 5.16.
 Surplus, continued availability for payment of dividends, etc., 5.06.
 Surviving corporation,
 Defined, 5.01.
 Designation as such in plan, 5.06.
 Privileges and liabilities, etc., 5.06.
 Telegraphs and telephones, Civ.Stat. 1420, 1421.
 Voting, all classes entitled to vote, percentage of vote necessary for approval, 5.03.

MILLS

Railroads, operation, Civ.Stat. 1302-3.05.

MINES AND MINERALS

Railroads, operation, Civ.Stat. 1302-3.05.

MINUTES OF PROCEEDINGS

Duty to keep, 2.44.

MISDEMEANORS

Crimes and Offenses, generally, this index.

MISREPRESENTATIONS

Fraud, generally, this index.

MISSIONARY CORPORATIONS

Exemption, 9.14.

MISSIONARY CORPORATIONS

—Cont'd
 Nonprofit Corporations, generally, this index.
 Organization, 2.01.

MODIFICATION

Reservation of power in Legislature to modify Act, 9.12.

MONEY

Merging corporations, shares, exchange or conversion, 5.01.

MONOPOLIES

Anti-Trust Laws, generally, this index.

MORTGAGES

Action to foreclose, receiver, appointment, 7.04.
 Electric light and power companies, Civ. Stat. 1437.
 Enforcement, exclusive right of trustee to sue, Civ.Stat. 1302-2.04.
 Foreclosure, receiver, appointment, 7.04.
 Gas companies, Civ.Stat. 1437.
 Liability for indebtedness of parent, subsidiary or affiliated corporation, Civ. Stat. 1302-2.06.
 Outside regular course of business, 5.10.
 Power of corporation to secure its obligation by, 2.02.
 Regular course of business, 5.09.
 Shareholders, right to dissent, 5.11.
 Within or without regular course of business, 5.09, 5.10.

MOTOR VEHICLES

Club services, Civ.Stat. 1528d.

MUNICIPAL POWER AGENCIES

Generally, Civ.Stat. 1435a-1.

MUTUAL TRUST INVESTMENT COMPANIES

Generally, Civ.Stat. 1528i.

NAME OF CORPORATION

Annual report, 9.14.
 Articles of amendment, statement, 4.04.
 Articles of correction, Civ.Stat. 1302-7.02.
 Articles of dissolution by incorporators, statement, 6.01.
 Articles of incorporation to set forth, 3.02.
 Assumed name,
 Authority to use, 2.05.
 Foreign corporation, permit to do business in state, 8.03.
 Cancellation of shares, redemption or purchase of redeemable shares, statement, 4.10.
 Certain words required, 2.05.
 Change of name,
 Amendment of articles, 4.01.
 Pending actions not abated, etc., 4.06.

NAME OF CORPORATION—Cont'd

Change of name—Cont'd
 Failure of foreign corporation to file, ground of revocation of certificate, 8.16.
 Consent to use similar name from existing corporation, 2.05.
 Cooperative associations, Civ.Stat. 1396-50.01, § 8.
 Protection, Civ.Stat. 1396-50.01, § 39.
 Disabled, use of word in corporate name, Civ.Stat. 1302-3.01.
 Dissolution as not precluding action or defense in, 7.12.
 Foreign, use of word in corporate name, Civ.Stat. 1302-3.01.
 Foreign Corporations, this index.
 Incorporation without change of firm name, Civ.Stat. 1302-2.02.
 Legion, use of word in name, Civ.Stat. 1302-3.01.
 Merger of subsidiary or subsidiaries into parent corporation, 5.16.
 New consolidated corporation, plan required to state, 5.02.
 Power to sue and be sued in, etc., 2.02.
 Prohibited words and phrases, 2.05.
 Registered name, generally. Foreign Corporations, this index.
 Requirements as to, 2.05.
 Reserved name,
 Application for filing, 2.06.
 Filing fee, 10.01.
 Exclusive right to use, how reserved, 2.05, 2.06.
 Foreign corporations, application to secretary of state, 8.04.
 Transfer of right to name, 2.06.
 Filing fee, 10.01.
 Same or deceptively similar to another corporation's name, 2.05.
 Spanish, use of word in corporate name, Civ.Stat. 1302-3.01.
 Statement of,
 Adoption of Act by corporation within five years, statement as to name, 9.14.
 Cancellation, treasury shares, statement to set forth, 4.11.
 Veteran, use of word in corporate name, Civ.Stat. 1302-3.01.
 Veteran organizations, use, written permission, Civ.Stat. 1302-3.01.
 Violations of Act, 9.14.
 War, use of word in corporate name, Civ.Stat. 1302-3.01.
 World war, use of word in corporate name, Civ.Stat. 1302-3.01.

NAPHTHA MOTOR RAILWAYS

Incorporation, purposes, Civ.Stat. 1302-3.05.

NEGOTIABLE INSTRUMENTS

Commercial Paper, generally, this index.

NET ASSETS

Defined, 1.02.

INDEX

280

References are to Articles unless otherwise indicated

NET ASSETS—Cont'd

Determination, 2.17.

911 EMERGENCY NUMBER

Generally, Civ.Stat. 1432c.

NO PAR SHARES

Defined, Misc. 1302-1.02.

NONPROFIT CORPORATIONS

Generally, Civ.Stat. 1396-1.01 et seq.

Actions and proceedings, Civ.Stat.

1396-2.02.

Defense of ultra vires, Civ.Stat.

1396-2.03.

Administration of law, Civ.Stat.

1396-9.04.

Admission, foreign corporations, Civ.

Stat. 1396-8.01.

Agents. Officers, employees and agents, generally, post.

Agricultural and livestock pools, exclu-

sion, Civ.Stat. 1396-2.01.

Agricultural enterprises, Civ.Stat. 1528k.

Amendments,

Articles of incorporation, post.

Certificate of authority, foreign corpo-

ration, Civ.Stat. 1396-8.12.

Anti-trust laws, Civ.Stat. 1396-10.05.

Appeals, Civ.Stat. 1396-9.05.

Application of law, Civ.Stat. 1396-10.04.

Appointment, receiver, Civ.Stat.

1396-7.04, 1396-7.05.

Approval, merger or consolidation, Civ.

Stat. 1396-5.03.

Articles of dissolution, Civ.Stat.

1396-6.05.

Filing, Civ.Stat. 1396-6.06.

Articles of incorporation, Civ.Stat.

1396-3.02.

Amendments, Civ.Stat. 1396-4.01.

Articles of amendment, Civ.Stat.

1396-4.03.

Filing, Civ.Stat. 1396-4.04.

Certificate of amendment, Civ.Stat.

1396-4.04, 1396-4.05.

Housing finance corporations, Civ.

Stat. 1269f-7.

Procedure, Civ.Stat. 1396-4.02.

Defined, Civ.Stat. 1396-1.02.

Filing, Civ.Stat. 1396-3.03.

Incorporators, Civ.Stat. 1396-3.01.

Restated, Civ.Stat. 1396-4.06.

Articles of merger or consolidation,

domestic corporations, Civ.Stat.

1396-5.04.

Assets,

Distribution, voluntary dissolution,

Civ.Stat. 1396-6.02, 1396-6.03.

Sale, lease or exchange, Civ.Stat.

1396-5.09.

Assistance, employees, Civ.Stat.

1396-2.02.

Audits and auditors, state agencies, as-

sisting, Civ.Stat. 1396-2.23B.

Banks, exclusion, Civ.Stat. 1396-2.01.

Board of directors. Directors, generally,

this index.

NONPROFIT CORPORATIONS

—Cont'd

Books and papers, Civ.Stat. 1396-2.23.

State agencies, assisting, Civ.Stat.

1396-2.23B.

Borrowing money, powers, Civ.Stat.

1396-2.02.

Bylaws, Civ.Stat. 1396-2.09.

Defined, Civ.Stat. 1396-1.02.

Organization meeting, Civ.Stat.

1396-3.05.

Cemetery companies, application of law,

Misc. 1302-3.03.

Certificate of incorporation,

Issuance, Civ.Stat. 1396-3.04.

Withdrawal, foreign corporations, Civ.

Stat. 1396-8.13.

Certificates and certification,

Amendment, articles of incorporation,

Civ.Stat. 1396-4.04, 1396-4.05.

Evidence, Civ.Stat. 1396-9.06.

Certificates of authority,

Application, filing, Civ.Stat. 1396-8.05.

Foreign corporations, post.

Reinstatement, Civ.Stat. 1396-9.02.

Changes, registered office or agent, Civ.

Stat. 1396-2.06.

Foreign corporation, Civ.Stat.

1396-8.08.

Citation of law, Civ.Stat. 1396-1.01.

Classes, members, Civ.Stat. 1396-2.08.

Classification, Civ.Stat. 1396-2.15.

Committees, Civ.Stat. 1396-2.18.

Actions without meetings, Civ.Stat.

1396-9.10.

Compensation, directors and officers,

Civ.Stat. 1396-2.24.

Conducting affairs without certificate of

authority, Civ.Stat. 1396-8.17.

Consent,

Actions without meetings, Civ.Stat.

1396-9.10.

Foreign corporations, name, similar to,

Civ.Stat. 1396-8.03.

Consolidation. Merger and consolida-

tion, generally, post.

Contracts, powers, Civ.Stat. 1396-2.02.

Conveyances, Civ.Stat. 1396-5.08.

Ultra vires, defense, Civ.Stat.

1396-2.03.

Cooperative Associations, generally, this

index.

Cooperative credit associations, exclu-

sion, Civ.Stat. 1396-2.01.

Cooperative marketing act corporations,

exclusion, Civ.Stat. 1396-2.01.

Copies, documents, evidence, Civ.Stat.

1396-9.06.

Corporation under special laws, applica-

tion of law, Civ.Stat. 1396-10.04.

Debts, personal liabilities of members,

Civ.Stat. 1396-2.08.

Decrees. Judgments and decrees, gener-

ally, post.

NONPROFIT CORPORATIONS

—Cont'd

Deeds and conveyances, Civ.Stat.

1396-5.08.

Ultra vires, defenses, Civ.Stat.

1396-2.03.

Default, involuntary dissolution, Civ.Stat.

1396-7.02.

Defenses, ultra vires, Civ.Stat. 1396-2.03.

Definitions, Civ.Stat. 1396-1.02.

Dental health service corporation, Civ.

Stat. 1396-2.01.

Deposits, dissolution, Civ.Stat.

1396-7.11.

Directors, Civ.Stat. 1396-2.14.

Actions without meetings, Civ.Stat.

1396-9.10.

Amendments, articles of incorporation,

Civ.Stat. 1396-4.02.

Board of directors, defined, Civ.Stat.

1396-1.02.

Classification, Civ.Stat. 1396-2.15.

Committees, Civ.Stat. 1396-2.18.

Compensation, Civ.Stat. 1396-2.24.

Delegation of powers, management,

committees, Civ.Stat. 1396-2.18.

Dividends, Civ.Stat. 1396-2.24.

Elections, Civ.Stat. 1396-2.13.

Another nonprofit corporation, Civ.

Stat. 1396-2.14.

Indemnification, Civ.Stat. 1396-2.22.

Loans, Civ.Stat. 1396-2.25.

Meetings, place and notice, Civ.Stat.

1396-2.19.

Number, Civ.Stat. 1396-2.15.

Organization meeting, Civ.Stat.

1396-3.05.

Parties, receivership or liquidation,

Civ.Stat. 1396-7.08.

Proxy voting, Civ.Stat. 1396-2.17.

Quorum, Civ.Stat. 1396-2.17.

Removal, Civ.Stat. 1396-2.15.

Term of office, Civ.Stat. 1396-2.15.

Vacancy in office, Civ.Stat. 1396-2.16.

Voting requirements, Civ.Stat.

1396-9.08.

Waiver, notice, Civ.Stat. 1396-9.09.

Wrongful distribution of assets, Civ.

Stat. 1396-2.26.

Dissolution,

Involuntary dissolution, generally, post.

Voluntary dissolution, generally, post.

Dividends, Civ.Stat. 1396-2.24.

Duties. Powers, generally, post.

Effective date, merger or consolidation of

domestic corporations, Civ.Stat.

1396-5.05.

Elections, Civ.Stat. 1396-2.15.

Directors, Civ.Stat. 1396-2.15,

1396-2.16.

Electric cooperative corporations, Civ.

Stat. 1528b.

Employees. Officers, employees and

agents, generally, post.

Evidence, certificates and documents,

Civ.Stat. 1396-9.06.

Exchanges, assets, Civ.Stat. 1396-5.09.

INDEX

References are to Articles unless otherwise indicated

NONPROFIT CORPORATIONS

—Cont'd
 Excluded associations, Civ.Stat. 1396-2.01.
 Exemptions, 9.14.
 Financial records and reports, Civ.Stat. 1396-2.23A.
 Real estate, purchase, Civ.Stat. 1302-4.01.
 Surplus lands, purchase, Civ.Stat. 1302-4.02.
 Existing corporations, Civ.Stat. 1396-10.04, 1396-10.05.
 Farmers cooperative societies, exclusion, Civ.Stat. 1396-2.01.
 Filing,
 Application,
 Certificate of authority, Civ.Stat. 1396-8.05.
 Withdrawal, foreign corporation, Civ.Stat. 1396-8.14.
 Articles of amendment, Civ.Stat. 1396-4.04.
 Articles of dissolution, Civ.Stat. 1396-6.06.
 Articles of incorporation, Civ.Stat. 1396-3.03.
 Decree,
 Dissolution, Civ.Stat. 1396-7.10.
 Revocation, foreign corporations, Civ.Stat. 1396-8.16.
 Foreign corporations,
 Assumed name certificate, Civ.Stat. 1396-8.03.
 Certificates of authority, Civ.Stat. 1396-8.12, 1396-8.13.
 Registered agents, resignation, Civ.Stat. 1396-8.08.
 Reinstatement application, Civ.Stat. 1396-7.01.
 Financial statements and reports, Civ. Stat. 1396-2.23A.
 Foreign corporations,
 Amended certificate of authority, Civ. Stat. 1396-8.12.
 Application,
 Certificate of authority, Civ.Stat. 1396-8.04.
 Reinstatement, Civ.Stat. 1396-8.15.
 Assumed name, certificate, filing, Civ. Stat. 1396-8.03.
 Certificates of authority, Civ.Stat. 1396-8.01.
 Amended, Civ.Stat. 1396-8.12.
 Application, Civ.Stat. 1396-8.04.
 Filing, Civ.Stat. 1396-8.05.
 Conducting affairs without certificate, Civ.Stat. 1396-8.17.
 Filing,
 Amendments, Civ.Stat. 1396-8.12.
 Termination, Civ.Stat. 1396-8.13.
 Issuance, Civ.Stat. 1396-8.06.
 Name, similar to, Civ.Stat. 1396-8.03.
 Reinstatement, Civ.Stat. 1396-8.15.
 Revocation, Civ.Stat. 1396-8.15.
 Filing decree, Civ.Stat. 1396-8.16.

NONPROFIT CORPORATIONS

—Cont'd
 Foreign corporations—Cont'd
 Certificates of authority—Cont'd
 Revocation—Cont'd
 Venue and process, Civ.Stat. 1396-7.03.
 Withdrawal, Civ.Stat. 1396-8.13.
 Conducting affairs without certificate of authority, Civ.Stat. 1396-8.17.
 Consent, names, similar to, Civ.Stat. 1396-8.03.
 Defined, Civ.Stat. 1396-1.02.
 Existing corporations, Civ.Stat. 1396-10.04.
 Existing general laws, Civ.Stat. 1396-10.06.
 Name, Civ.Stat. 1396-8.03.
 Notice, certificate of authority, revocation, Civ.Stat. 1396-8.15.
 Powers, Civ.Stat. 1396-8.02.
 Registered agent or office, Civ.Stat. 1396-8.07.
 Change, Civ.Stat. 1396-8.08.
 Reports, Civ.Stat. 1396-9.01.
 Failure to file, Civ.Stat. 1396-9.02.
 Service of process, Civ.Stat. 1396-8.08.
 Withdrawal, Civ.Stat. 1396-8.13.
 Filing application, Civ.Stat. 1396-8.14.
 Foreign trade, application of law, Civ. Stat. 1396-10.01.
 Forfeitures, failure to file reports, Civ. Stat. 1396-9.02.
 Forms, Civ.Stat. 1396-9.07.
 Fraternal organizations, exclusion, Civ. Stat. 1396-2.01.
 Incorporators, Civ.Stat. 1396-3.01.
 Indebtedness, personal liability of members, Civ.Stat. 1396-2.08.
 Indemnification, officers and directors, Civ.Stat. 1396-2.22.
 Insolvency,
 Defined, Civ.Stat. 1396-1.02.
 Wrongful distribution of assets, Civ. Stat. 1396-2.26.
 Inspection, financial records and reports, Civ.Stat. 1396-2.23A.
 Insurance companies, exclusion, Civ.Stat. 1396-2.01.
 Interstate commerce, application of law, Civ.Stat. 1396-10.01.
 Investments, Civ.Stat. 1396-2.02.
 Involuntary dissolution, Civ.Stat. 1396-7.01.
 Decree, Civ.Stat. 1396-7.09.
 Filing, Civ.Stat. 1396-7.10.
 Deposits, Civ.Stat. 1396-7.11.
 Notification and opportunity to cure default, Civ.Stat. 1396-7.02.
 Process, Civ.Stat. 1396-7.03.
 Reinstatement, Civ.Stat. 1396-7.01.
 Setting aside, Civ.Stat. 1396-9.02.
 Survival of remedy, Civ.Stat. 1396-7.12.
 Venue, Civ.Stat. 1396-7.03.

NONPROFIT CORPORATIONS

—Cont'd
 Judgments and decrees,
 Appeal, Civ.Stat. 1396-9.05.
 Dissolution,
 Filing, Civ.Stat. 1396-7.10.
 Involuntary dissolution, Civ.Stat. 1396-7.02, 1396-7.09.
 Revocation, certificate of authority, Civ.Stat. 1396-8.16.
 Judicial dissolution, charters, prima facie evidence of facts stated, Civ.Stat. 1396-7.02.
 Leases, powers, Civ.Stat. 1396-2.02, 1396-5.09.
 Legislature, reservation of power, Civ. Stat. 1396-10.02.
 Liquidation,
 Appointment, receiver, Civ.Stat. 1396-7.06.
 Parties defendant, Civ.Stat. 1396-7.08.
 Loans, directors and officers, Civ.Stat. 1396-2.25.
 Meetings,
 Action without meeting, Civ.Stat. 1396-9.10.
 Amendments, articles, Civ.Stat. 1396-4.02.
 Directors, place and notice, Civ.Stat. 1396-2.19.
 Members, Civ.Stat. 1396-2.10.
 Organization meeting, Civ.Stat. 1396-3.05.
 Members, Civ.Stat. 1396-2.08.
 Actions without meetings, Civ.Stat. 1396-9.10.
 Compensation, Civ.Stat. 1396-2.24.
 Defined, Civ.Stat. 1396-1.02.
 Dividends, Civ.Stat. 1396-2.24.
 Meetings, Civ.Stat. 1396-2.10.
 Notice, Civ.Stat. 1396-2.11.
 Parties, receivership or liquidation, Civ.Stat. 1396-7.08.
 Personal liability, debts, Civ.Stat. 1396-2.08.
 Quorum, Civ.Stat. 1396-2.12.
 Voting, Civ.Stat. 1396-2.13, 1396-9.08.
 Waiver, notice, Civ.Stat. 1396-9.09.
 Merger and consolidation, Civ.Stat. 1396-5.06, 1396-5.07.
 Approval, Civ.Stat. 1396-5.03.
 Articles, Civ.Stat. 1396-5.04.
 Effective date, Civ.Stat. 1396-5.05.
 Procedure, Civ.Stat. 1396-5.01, 1396-5.02.
 Miscellaneous Corporation Laws Act, Civ.Stat. 1302-1.01 et seq.
 Applicability, Misc. 1302-1.03.
 Misdemeanors, financial records and reports, failure to prepare, Civ.Stat. 1396-2.23A.
 Mutual loan corporations, exclusion, Civ. Stat. 1396-2.01.
 Names, Civ.Stat. 1396-2.04.
 Foreign corporations, Civ.Stat. 1396-8.03.

INDEX

282

References are to Articles unless otherwise indicated

NONPROFIT CORPORATIONS

—Cont'd

Notice,
 Amendments, articles of incorporation, Civ.Stat. 1396-4.02.
 Directors meetings, Civ.Stat. 1396-2.19.
 Foreign corporations, certificate of authority, revocation, Civ.Stat. 1396-8.15.
 Meetings, Civ.Stat. 1396-2.11.
 Noncompliance with laws, Civ.Stat. 1396-7.02.
 Organization meeting, Civ.Stat. 1396-3.05.
 Waiver, Civ.Stat. 1396-9.09.

Number, directors, Civ.Stat. 1396-2.15.

Office. Registered office, generally, post.

Officers, employees and agents, Civ.Stat. 1396-2.20.
 Assistance, Civ.Stat. 1396-2.02.
 Compensation, Civ.Stat. 1396-2.24.
 Dividends, Civ.Stat. 1396-2.24.
 Indemnification, Civ.Stat. 1396-2.22.
 Loans, Civ.Stat. 1396-2.25.
 Organization meeting, Civ.Stat. 1396-3.05.
 Process, service, Civ.Stat. 1396-2.07.
 Registered agent, generally, post.
 Removal, Civ.Stat. 1396-2.21.
 Service of process, Civ.Stat. 1396-2.07.

Opportunity, cure default, Civ.Stat. 1396-7.02.

Organization, 2.01.

Organization meeting, Civ.Stat. 1396-3.05.

Partial invalidity of law, Civ.Stat. 1396-10.03.

Parties, receivership or liquidation, Civ. Stat. 1396-7.08.

Pension plans, Civ.Stat. 1396-2.02.

Perpetual succession, corporate name, Civ.Stat. 1396-2.02.

Place, directors meetings, Civ.Stat. 1396-2.19.

Plan of distribution, voluntary dissolution, Civ.Stat. 1396-6.03.

Powers, Civ.Stat. 1396-2.02.
 Foreign corporations, Civ.Stat. 1396-8.02.

Receivers, Civ.Stat. 1396-7.07.

President of corporation,
 Agent for service of process, Civ.Stat. 1396-2.07.
 Conveyances, Civ.Stat. 1396-5.08.
 Defined, Civ.Stat. 1396-1.02.
 Foreign corporation, service of process, Civ.Stat. 1396-8.09.

Process,
 Involuntary dissolution, Civ.Stat. 1396-7.03.
 Service, Civ.Stat. 1396-2.07.
 Foreign corporations, Civ.Stat. 1396-8.09.

Proxy voting, Civ.Stat. 1396-2.13.

Purposes, Civ.Stat. 1396-2.01.

NONPROFIT CORPORATIONS

—Cont'd

Qualifications, receivers, Civ.Stat. 1396-7.07.

Quorum,
 Directors, Civ.Stat. 1396-2.17.
 Members, Civ.Stat. 1396-2.12.

Real property, powers, Civ.Stat. 1396-2.02.

Receivers,
 Appointment, Civ.Stat. 1396-7.04, 1396-7.05.
 Liquidation, Civ.Stat. 1396-7.06.
 Parties defendant, Civ.Stat. 1396-7.08.
 Qualification and powers, Civ.Stat. 1396-7.07.
 Rehabilitation, appointment, Civ.Stat. 1396-7.05.
 Specific corporate assets, Civ.Stat. 1396-7.04.

Records and recordation, Civ.Stat. 1396-2.23.
 Financial records, Civ.Stat. 1396-2.23A.
 State agencies, assisting, audits, Civ. Stat. 1396-2.23B.

Registered agent, Civ.Stat. 1396-2.05.
 Change, Civ.Stat. 1396-2.06.
 Foreign corporations, Civ.Stat. 1396-8.07.
 Change, Civ.Stat. 1396-8.08.
 Requirements, Civ.Stat. 1396-2.05.
 Resignation, Civ.Stat. 1396-2.06.
 Service of process, Civ.Stat. 1396-2.07.

Registered office, Civ.Stat. 1396-2.05.
 Change, Civ.Stat. 1396-2.06.
 Foreign corporations, Civ.Stat. 1396-8.07.
 Change, Civ.Stat. 1396-8.08.
 Requirements, Civ.Stat. 1396-2.05.

Rehabilitation, receiver, appointment, Civ.Stat. 1396-7.05.

Reinstatement,
 Certificate of incorporation or charter, Civ.Stat. 1396-9.02.
 Involuntary dissolution, Civ.Stat. 1396-7.01.

Removal,
 Directors, Civ.Stat. 1396-2.15.
 Officers, Civ.Stat. 1396-2.21.

Repeal, prior law, Civ.Stat. 1396-10.06.

Reports, Civ.Stat. 1396-9.01.
 Failure to file, Civ.Stat. 1396-9.02.
 Involuntary dissolution, Civ.Stat. 1396-7.01.
 Financial reports, Civ.Stat. 1396-2.23A.
 Forms, Civ.Stat. 1396-9.07.
 Notice, failure to file, Civ.Stat. 1396-7.02.
 State agencies, assisting, Civ.Stat. 1396-2.23B.

Reservation of power, legislature, Civ. Stat. 1396-10.02.

Resolutions,
 Amendments, articles of incorporation, Civ.Stat. 1396-4.02.

NONPROFIT CORPORATIONS

—Cont'd

Resolutions—Cont'd
 Voluntary dissolution proceedings, revocation, Civ.Stat. 1396-6.04.

Restated articles of incorporation, Civ. Stat. 1396-4.06.

Rural credit unions, exclusion, Civ.Stat. 1396-2.01.

Rural electric cooperative corporations, exclusion, Civ.Stat. 1396-2.01.

Sales, assets, Civ.Stat. 1396-5.09.

Seal, Civ.Stat. 1396-2.02.
 Conveyances, Civ.Stat. 1396-5.08.
 Secretary defined, Civ.Stat. 1396-1.02.

Service of process, Civ.Stat. 1396-2.07.
 Foreign corporations, Civ.Stat. 1396-8.09.

Sewer service, exclusion, Civ.Stat. 1396-2.01.

Shares, powers, Civ.Stat. 1396-2.02.

Special laws, corporations organized under, application of law, Civ.Stat. 1396-10.04.

Survival of remedy, dissolution, Civ.Stat. 1396-7.12.

Telephone cooperative corporations, exclusion, Civ.Stat. 1396-2.01.

Term of office, directors, Civ.Stat. 1396-2.15.

Treasurer, defined, Civ.Stat. 1396-1.02.

Trustees, Civ.Stat. 1396-2.14.

Ultra vires, defense, Civ.Stat. 1396-2.03.

Vacancy, directors, Civ.Stat. 1396-2.16.

Venue, involuntary dissolution, Civ.Stat. 1396-7.03.

Verified, defined, Civ.Stat. 1396-1.02.

Vice president of corporation,
 Agent for service of process, Civ.Stat. 1396-2.07.
 Conveyances, Civ.Stat. 1396-5.08.
 Defined, Civ.Stat. 1396-1.02.
 Service of process, Civ.Stat. 1396-2.07.
 Foreign corporations, Civ.Stat. 1396-8.09.

Voluntary dissolution, Civ.Stat. 1396-6.01.
 Application of assets, Civ.Stat. 1396-6.02.
 Articles of dissolution, filing, Civ.Stat. 1396-6.05, 1396-6.06.
 Deposits, Civ.Stat. 1396-7.11.
 Distribution, assets, Civ.Stat. 1396-6.02, 1396-6.03.
 Revocation of proceedings, Civ.Stat. 1396-6.04.
 Survival of remedy, Civ.Stat. 1396-7.12.

Voting requirements, Civ.Stat. 1396-2.13, 1396-9.08.

Waiver, notice, Civ.Stat. 1396-9.09.

Water service, exclusion, Civ.Stat. 1396-2.01.

Wrongful distribution of assets, liability, Civ.Stat. 1396-2.26.

References are to Articles unless otherwise indicated

NOTES

Commercial Paper, generally, this index.

NOTICE

Appraiser, filing report of value of shares of dissenting shareholders, 5.12.

Citation by publication, involuntary dissolution, 7.03.

Close corporation, Actions, 12.51.

Termination, 12.22.

Cooperative associations, Delinquent reports, Civ.Stat.

1396-50.01, § 37.

Meetings, Civ.Stat. 1396-50.01, § 14.

Corporations, certification by secretary of state to attorney general of grounds for dissolution or revocation of certificate, 7.02.

Creditors, statement of intent to dissolve, 6.04.

Directors' meetings, 2.37.

Organization meetings, 3.06.

Dissolution, this index.

Dividends, consuming assets, requisites of notice, 2.39.

Foreign Corporations, this index.

Incorporation without change of firm name, Civ.Stat. 1302-2.02.

Lien against corporate property, fines, penalties and forfeitures, Civ.Stat. 1302-5.08.

Meetings. Shares and Shareholders, this index.

Name of corporation, transfer, etc., filing fee, 10.01.

Nonprofit Corporations, this index.

Publication, this index.

Quo warranto proceedings, insolvent corporations, Civ.Stat. 1302-5.18.

Receivers, appointment, insolvent corporations, Civ.Stat. 1302-5.18.

Redemption of shares, 4.08.

Registered agent,

Change of address, 2.10-1.

Resignation, 2.10, 8.09.

Secretary of State, this index.

Shares and Shareholders, this index.

State treasurer, proposed escheat of distributive share of unknown shareholders, dissolution or liquidation, 7.11.

Voluntary dissolution proceedings, revocation, 6.05.

NURSING AND CONVALESCENT HOMES

Health facilities, development, Civ.Stat. 1528j.

OATHS

Interrogatories propounded by secretary of state, 9.01.

OBJECTIONS

Dissenting shareholders to proposed corporate action, 5.12.

OBLIGATIONS

Acquisition by corporation of own obligations, etc., powers, 2.02.

OFFENSES

Crimes and Offenses, generally, this index.

OFFICERS, EMPLOYEES AND AGENTS

Annual report, naming initial registered agent, 9.14.

Answers to interrogatories, persons or officers required to answer, etc., 9.01.

Attorney general, request to examine corporate books and records, duty to grant, Civ.Stat. 1302-5.02.

Attorneys in Fact, generally, this index. Authority and duties, 2.42.

Restricted to scope of purpose of corporation, 2.02.

Certificates of shares, officers required to sign, 2.19.

Cooperative associations, Civ.Stat. 1396-50.01, § 22.

Removal, Civ.Stat. 1396-50.01, § 23.

Directors, this index.

Dissolution,

Impairing remedies against, 7.12.

Liability between involuntary dissolution and reinstatement, 7.01.

Dissolved corporations, Civ.Stat. 1302-2.07.

Educational corporations, employment, Civ.Stat. 1302-3.02.

Election or appointment, etc., 2.42.

Organization meeting of directors, 3.06.

Enumerated, 2.42.

Indemnification, 2.02.

Insurance, liability insurance, power to purchase, 2.02.

Interrogatories propounded to by secretary of state, 9.01.

Liability of,

Period between involuntary dissolution and reinstatement, 7.01.

Voting list, failure to keep, etc., 2.27.

Loans,

Authorized, 2.02.

Liability of directors for making, 2.41.

Married women, eligibility, Civ.Stat. 1302-2.01.

Nonprofit Corporations, this index.

Power to appoint, etc., 2.02.

President of corporation,

Articles of amendment, execution, 4.04.

Calling special meetings of shareholders, 2.24.

Election, 2.42.

Execution of statement of cancellation, Redemption or purchase of redeemable shares, 4.10.

Treasury shares, 4.11.

Execution of statement of reduction of stated capital, 4.12.

OFFICERS, EMPLOYEES AND AGENTS—Cont'd

President of corporation—Cont'd

Foreign corporations, agent for service of process on corporation, 8.10.

Merger or consolidation, execution of articles of, 5.04.

Nonprofit Corporations, this index.

Secretary not to be same person as president, 2.42.

Signature on recorded deed of corporation, 5.08.

Process, agents of foreign corporation for service on, 8.10.

Registered Agent, generally, this index.

Removal, 2.43.

Effect on contract rights, 2.43.

Secretary of corporation,

Articles of amendment, execution, 4.04.

Election or appointment, 2.42.

Execution of statement of cancellation, Redemption or purchase of redeemable shares, 4.10.

Treasury shares, 4.11.

Execution of statement of reduction of stated capital, 4.12.

Foreign corporations, agent for service of process on corporation, 8.10.

Merger or consolidation, execution of articles of, 5.04.

President not to be same person as,

2.42.

Shareholders' meetings, special meetings, Call, 2.24.

Notice, 2.25.

Shares, issuance to, 2.22.

Treasurer, election, 2.42.

Two or more offices held by same person, 2.42.

Vice president of corporation,

Foreign corporations, agent for service of process on corporation, 8.10.

Merger or consolidation, execution of articles of, 5.04.

Nonprofit Corporations, this index.

Signature on recorded deed of corporation, 5.08.

Voting list, duty to make and keep on file, 2.27.

OFFICES

Nonprofit corporations, audits, Civ.Stat. 1396-2.23B.

OFFICIAL CAPACITY

Defined, indemnity, 2.02-1.

OIL AND GAS CORPORATIONS

Generally, Civ.Stat. 1435 et seq.

OIL AND GAS WELLS

Waste water corporations, Civ.Stat. 1508 et seq.

INDEX

284

References are to Articles unless otherwise indicated

OIL PIPELINES

Combination of business of operating and engaging in oil producing not permitted under Act, 2.01.
Roads and highways, Civ.Stat. 1436b.

OPEN-END INVESTMENT COMPANY

Pledge, transfer or other disposition of own shares, etc., 2.03.
Purchase or acquisition of own shares, 2.03.

OPTIONS

Shares, 2.14-1.
Restrictions respecting, 2.22.

ORDINARY CORPORATION

Defined, close corporation, 12.02.

ORGANIZATION

Charges and expenses, payment out of consideration received, effect, 2.18.
Meeting of directors, 3.06.

OSTENSIBLE CORPORATIONS

Indebtedness, Civ.Stat. 1302-2.03.

OUTSTANDING SHARES

Shares and Shareholders, this index.
Treasury shares not deemed to be, 1.02.

PAID-UP CAPITAL

Defined, Civ.Stat. 1302-1.02.

PAPERS

Books and Papers, generally, this index.

PARAGRAPHS

Division of Act into, effect, 1.01; Civ. Stat. 1302-1.01.

PARENT CORPORATION

Liability for indebtedness of parent, subsidiary or affiliated corporation, Civ. Stat. 1302-2.06.
Merger and consolidation, subsidiary into parent corporation, 5.16.

PARTIAL INVALIDITY

Act, effect, 9.13.

PARTIES

Foreclosure of state lien for fines, penalties and forfeitures, Civ.Stat. 1302-5.12.

PARTNERS AND PARTNERSHIPS

Incorporation without change of firm name, notice, Civ.Stat. 1302-2.02.
Incorporators, 3.01.
Power to become partner, 2.02.
Receivers of property, right to appointment, etc., 7.04.

PARTS

Division of Act into, effect, 1.01; Civ. Stat. 1302-1.01.

PARTY LINES

Telegraphs and telephones, emergency calls, Civ.Stat. 1432a.

PATRIOTIC CORPORATIONS

Exemption, 9.14.
Nonprofit Corporations, generally, this index.
Organization, 2.01.

PAYMENT

Judgment, determination of value of shares of dissenting shareholder, time of payment, 5.12.
Redemption price of shares, method, effect, 4.08.
Shares and Shareholders, this index.

PENALTIES

Fines and Penalties, generally, this index.

PENDING ACTIONS

Amendment of articles, pending actions not affected by, 4.06.

PENSIONS AND PENSION PLANS

Nonprofit corporations, Civ.Stat. 1396-2.02.
Power to establish, 2.02.

PERMIT TO DO BUSINESS

Defined, Misc. 1302-1.02.
Foreign corporations, assumed name, doing business in state, 8.03.

PERPETUAL SUCCESSION

Powers, 2.02.

PERSONAL PROPERTY

Forfeitures, generally, this index.
Purchase, lease, acquisition, etc., powers, 2.02.

PETITION

Dissenting shareholder, appointment of appraiser, value of shares, 5.12.

PETROLEUM OIL PRODUCING

Combination of business of engaging in with oil pipeline business not permitted, 2.01.

PICKETING

Gas, electric or water service, disruption, Civ.Stat. 1446a.

PIPES AND PIPELINES

Water companies, Civ.Stat. 1433.

PLANS AND SPECIFICATIONS

Housing corporations, Civ.Stat. 1524g.

PLEDGES

Liability for indebtedness of parent, subsidiary or affiliated corporation, Civ. Stat. 1302-2.06.
Outside regular course of business, 5.10.
Pledgee, liability as shareholder or subscriber, 2.21.

PLEDGES—Cont'd

Power of corporation to secure obligation by, 2.02.
Regular course of business, 5.09.
Shareholders, right to dissent, 5.11.
Voting of pledged shares, 2.29.
Within or without regular course of business, 5.09, 5.10.

POLITICAL PARTIES

Contributions, Civ.Stat. 1349.

POLITICAL SUBDIVISIONS

Electric light and power companies, joint agreements, Civ.Stat. 1435b.

POPULAR NAME LAWS

Automobile Club Services Act, Civ.Stat. 1528d.
Business Corporation Act, 1.01 et seq.
Close Corporation Law, 12.01.
Electric Cooperative Corporation Act, Civ.Stat. 1528b.
Emergency Number Act, Civ.Stat. 1432c.
Gas Utility Regulatory Act, Civ.Stat. 1446e.
Housing Law, Civ.Stat. 1528a.
Miscellaneous Corporation Laws Act, Civ.Stat. 1302-1.01 et seq.
Mutual Trust Investment Companies, Civ.Stat. 1528i.
Professional corporations, Civ.Stat. 1528e.
Public Utility Regulatory Act, Civ.Stat. 1446c.
Telephone Cooperative Act, Civ.Stat. 1528c.

POULTRY AND POULTRY PRODUCTS

Nonprofit corporations, Civ.Stat. 1528k.

POWER COMPANIES

Electric Light and Power Companies, generally, this index.

POWER OF ATTORNEY

Attorneys in Fact, generally, this index.

POWERS

Articles of incorporation statement, 3.02.
Convertible indebtedness, creation and issuance, 2.14-1.
Cooperative associations, Civ.Stat. 1396-50.01, § 6.
General powers, 2.02.
Nonprofit Corporations, this index.
Options, creation and issuance, 2.14-1.
Reservation of power in Legislature, amendment, repeal, or modification of Act, 9.12.
Secretary of state, 9.03.
Special powers of particular corporations under existing laws, continued, 9.15.
Stock rights, creation and issuance, 2.14-1.

PRE-EMPTIVE RIGHTS

Shares and Shareholders, this index.

References are to Articles unless otherwise indicated.

- PREFERRED SHARES**
Shares and Shareholders, this index.
- PRESIDENT OF CORPORATION**
Officers, Employees and Agents, this index.
- PRIMA FACIE EVIDENCE**
Attorney general, certificate of mailing notice, process, involuntary dissolution, 7.03.
Certified copies, secretary of state, prima facie evidence, 9.05.
Deed signed by president or vice-president, 5.08.
Dissolution or revocation of certificate, secretary of state's certificate as to violations, 7.02.
Recorded conveyance from corporation, 5.08.
Stock transfer books, shareholders entitled to examine voting list, etc., 2.27.
- PRINCIPAL PLACE OF BUSINESS**
Record of shareholders to be kept at, 2.44.
- PRIOR LAWS**
Application to existing corporation, 9.15.
Repeal, extent and effect, 9.16.
- PRIORITIES AND PREFERENCES**
Causeways, Civ.Stat. 1468.
- PRIVILEGES AND IMMUNITIES**
Close corporation, 12.37.
Merger and consolidation, 5.10.
- PROCEDURE**
Adoption of Act within five years, 9.14.
Amendment of articles of incorporation, 4.02.
Merger, domestic corporations, 5.01.
Redemption of shares, 4.08.
Voluntary dissolution. Dissolution, this index.
- PROCEEDINGS**
Actions and Proceedings, generally, this index.
- PROCESS**
Foreclosure of state liens for fines, penalties and forfeitures, Civ.Stat. 1302-5.12.
Foreign Corporations, this index.
Involuntary dissolution, service of citation, 7.03.
Nonprofit Corporations, this index.
Officer as agent for service, 2.11.
Registered agent, agent for service, 2.11.
Secretary of State, this index.
Service by publication, involuntary dissolution, 7.03.
- PROFESSIONAL ASSOCIATIONS**
Generally, Civ.Stat. 1528f.
- PROFESSIONAL CORPORATIONS**
Generally, Civ.Stat. 1528e.
- PROFESSORS**
Educational corporations, appointment, Civ.Stat. 1302-3.02.
- PROFIT-SHARING**
Power to establish plans for, 2.02.
- PROMISSORY NOTES**
Commercial Paper, generally, this index.
- PROOF**
Evidence, generally, this index.
- PROPERTY**
Acquisition, owning, holding, improving, etc., powers, 2.02.
Conveyance authorized, 5.06.
Exchange of Property, generally, this index.
Forfeitures, generally, this index.
Liens not impaired by merger or consolidation, 5.06.
Sales, generally. Assets, this index.
- PROVISIONAL DIRECTOR**
Defined, close corporation, 12.51.
- PROXIES**
Requisites, duration, etc., 2.29.
Voting shares, 2.29.
- PUBLIC ACCOUNTANTS**
Director's reliance on certificate of as defense, 2.41.
- PUBLIC LANDS**
Toll roads, right of way, Civ.Stat. 1455.
- PUBLIC UTILITIES**
Generally, Civ.Stat. 1446c.
Deposits, customers, Civ.Stat. 1440, 1440a.
Disruption, picketing, threats or intimidation, Civ.Stat. 1446a.
Electric Light and Power Companies, generally, this index.
Telegraphs and telephones, Civ.Stat. 1416 et seq.
- PUBLICATION**
Notice,
Incorporation without change of firm name, Civ.Stat. 1302-2.02.
Proposed escheat of distributive shares of unknown shareholders, dissolution, etc., 7.11.
Service of process, involuntary dissolution, 7.03.
- PUNISHMENT**
Crimes and Offenses, generally, this index.
- PURCHASE**
Own shares by corporation, 2.03.
Real Property, this index.
- PURPOSES**
Generally, 2.01.
Articles of incorporation,
Amendment changing purpose, 4.01.
To state, 2.01, 3.02.
- QUARRIES**
Railroads to, incorporation, Civ.Stat. 1302-3.05.
- QUO WARRANTO**
Insolvent operations, Civ.Stat. 1302-5.14 et seq.
Shares and shareholders, cancellation, Civ.Stat. 1354 et seq.
- QUORUM**
Directors, 2.35.
Nonprofit corporations,
Directors, Civ.Stat. 1396-2.17.
Members, Civ.Stat. 1396-2.12.
Shareholders' meetings, 2.28.
- RAILROADS**
Depots and stations, acquisition and maintenance, Civ.Stat. 1302-3.05.
Exemption, 9.14.
Incorporation, purposes, Civ.Stat. 1302-3.05.
Organization, 2.01.
Right of way, acquisition and maintenance, Civ.Stat. 1302-3.05.
Toll roads, crossings, Civ.Stat. 1458.
- RATES AND CHARGES**
Housing corporations, Civ.Stat. 1524e et seq.
Interest, Civ.Stat. 1302-2.09A.
Toll bridges, Civ.Stat. 1476.
Toll roads, Civ.Stat. 1464.
Waste water corporations, Civ.Stat. 1511.
- REAL PROPERTY**
Benevolent societies, Civ.Stat. 1402, 1403.
Conveyance authorized, etc., 5.06.
Cooperative Associations, generally, this index.
Divestment of realty held contrary to law, ultra vires as defense, 2.04.
Foreign Corporations, this index.
Leases, generally, this index.
Lodges, Civ.Stat. 1402, 1403.
Mortgages, generally, this index.
Nonprofit corporations, powers, Civ.Stat. 1396-2.02.
Purchases, 2.02.
- RECEIVERS**
Generally, 7.04 et seq.
Actions by or against, 7.07.
Additional powers and duties, 7.07.
Allowances to, power of court, 7.07.
Ancillary receiver, appointment, jurisdiction of court, etc., 7.07.
Appointment, Civ.Stat. 1302-5.10.
Grounds, 7.04.
Insolvent corporations, Civ.Stat. 1302-5.15.

INDEX

286

References are to Articles unless otherwise indicated

RECEIVERS—Cont'd

Appointment—Cont'd
 Insolvent corporations—Cont'd
 Notice, Civ.Stat. 1302-5.18.
 Qualifications, 7.07.
 Specific assets, 7.04.
 Assets misapplied or wasted, ground for appointment, 7.05.
 Attorneys, allowances to, power of court, 7.07.
 Bond, 7.07.
 Cancellation of corporate permit, appointment, Civ.Stat. 1302-5.10.
 Close corporation, 12.52.
 Courts, exclusive jurisdiction retained over assets, 7.04.
 Creditors,
 Action by, rehabilitation of corporation, appointment, 7.05.
 Failure to file proof of claim, effect, 7.07.
 Filing of claims, order requiring, 7.07.
 Right to have appointed, etc., 7.04, 7.06.
 Enforcement of rights of estate, Civ.Stat. 1302-5.11.
 Expenses, insolvent corporations, Civ. Stat. 1302-5.15.
 Extension, time for filing claims of creditors, 7.07.
 Fines and penalties, action by state to recover, appointment, Civ.Stat. 1302-5.10.
 Forfeiture of corporate charter, appointment, Civ.Stat. 1302-5.10.
 Ground for appointment, specific assets, 7.04.
 Inadequacy of other remedies at law or equity, 7.04.
 Insolvent corporations, Civ.Stat. 1302-5.15.
 Notice of appointment, Civ.Stat. 1302-5.18.
 Irreparable injury to corporation, ground for appointment, 7.05.
 Jurisdiction, exclusive jurisdiction of appointing court, 7.04, 7.07.
 Liability as shareholder or subscriber, 2.21.
 Liquidation of assets, 7.06 et seq.
 Nonprofit Corporations, this index.
 Notice, appointment, insolvency, Civ. Stat. 1302-5.18.
 Order appointing, statement of additional and unusual powers and duties, 7.07.
 Parties, shareholders as not necessary parties defendant, 7.08.
 Powers and duties, 7.07.
 Qualifications, 7.07.
 Rehabilitation of corporation, 7.05.
 Sale or disposition of assets, allowances to receiver or attorneys from proceeds, 7.07.
 Shareholders' suit, rehabilitation of corporation, appointment, 7.05.

RECEIVERS—Cont'd

Specific assets, appointment of receiver for, grounds, 7.04.
 Sue and be sued, authority, 7.07.
 Voting of shares in name of, 2.29.

RECIPROCAL OR INTER-INSURANCE EXCHANGES

Corporate attorneys in fact, organization, 2.01.

RECORDS AND RECORDATION

Bylaws restricting transfer of shares, 2.22.
 Conveyance, recordation as prima facie evidence of authority from directors, 5.08.
 Cooperative associations, Civ.Stat. 1396-50.01, § 35.
 Examination by attorney general, Civ. Stat. 1302-5.01 et seq.
 Nonprofit Corporations, this index.
 Refusal to permit inspection by attorney general or representatives, Civ.Stat. 1302-5.05.
 Secretary of state,
 Date of mailing notice to corporation as to causes for dissolution, 7.02.
 Processes, notices, etc.,
 Duty to keep record, 2.11.
 Fees, maintaining records, 10.01.
 Served on secretary as agent for foreign corporation, 8.10.

REDEEMABLE SHARES

Shares and Shareholders, this index.

REDUCTION

Stated Capital, this index.

REDUCTION SURPLUS

Surplus, this index.

REGISTERED AGENT

Address,
 Articles of incorporation, statement in, 3.02.
 Change, 2.10-1.
 Fees, filing statement, 10.01.
 Change,
 Address, 2.10-1.
 Requirements, 2.10.
 Statement to be filed,
 Filing fee, 10.01.
 Requisites, 2.10.
 Cooperative associations, Civ.Stat. 1396-50.01, § 7.
 Dissolution, ground of failure to maintain, 7.01.
 Fees, filing statement of change of address, 10.01.
 Foreign Corporations, this index.
 Nonprofit Corporations, this index.
 Process, notice, etc., agent for service on corporation, 2.11.
 Required, place of office, 2.09.

REGISTERED AGENT—Cont'd

Resignation, filing with secretary of state, etc., 2.10.
 Foreign corporation, 8.09.
 Statements,
 Change of address, 2.10-1.
 Designating, 9.14.

REGISTERED NAME

Foreign Corporations, this index.

REGISTERED OFFICE

Address,
 Articles of incorporation, statement as to initial office, 3.02.
 Change of address, 2.10-1.
 Change,
 Requisites, 2.10.
 Statement to be filed,
 Filing fee, 10.01.
 Requisites, 2.10.
 Cooperative associations, Civ.Stat. 1396-50.01, § 7.
 Foreign Corporations, this index.
 Maintenance in state, 2.09.
 Meetings of shareholders at, 2.24.
 Nonprofit Corporations, this index.
 Process, service on corporation at, involuntary dissolution, 7.03.
 Required, 2.09.
 Statement designating, 9.14.

REGISTRATION

Toll roads, articles of incorporation, Civ. Stat. 1451.

REGISTRATION OF SECURITIES

Foreign corporations, maintaining offices for, etc., as not transacting business in state, 8.01.

REHABILITATION

Receivers, 7.05.

REINSTATEMENT

Charter or certificate of authority, filing fee, 10.01.
 Close corporation, 12.23.
 Foreign corporation, 8.16.
 Involuntarily dissolved corporation, 7.01.

RELIGIOUS ORGANIZATIONS AND SOCIETIES

Contributions, Civ.Stat. 1349.
 Fines and penalties, Civ.Stat. 1351.
 Exemption, 9.14.
 Nonprofit Corporations, generally, this index.
 Organization, 2.01.
 Usury, interposing defense, Civ.Stat. 1302-2.09.

REMEDIES

Survival after dissolution, 7.12.

REMOVAL

Cooperative associations, directors and officers, Civ.Stat. 1396-50.01, § 23.
 Directors, 2.32.

References are to Articles unless otherwise indicated

- REMOVAL**—Cont'd
 Nonprofit corporations,
 Directors, Civ.Stat. 1396-2.15.
 Officers, Civ.Stat. 1396-2.21.
 Officers and agents, 2.43.
- RENEWAL**
 Certificate of authority, foreign corporation, 8.05.
 Effect and term, 8.07.
 Registered name, 2.08.
- REORGANIZATION**
 Articles of incorporation, amendment, 4.14.
 Charges and expenses, payment out of consideration for shares, 2.18.
- REPEAL**
 By-laws, power vested in shareholders, 2.23.
 Existing laws,
 Effect and extent, 9.16.
 Special provisions for certain corporations not repealed, 9.15.
 Reservation of power in Legislature to repeal Act, 9.12.
 Uniform Stock Transfer Act, 2.22.
- REPORTS**
 Annual reports,
 Dissolution for failure to file, secretary of state to certify names of corporations in default, 7.02.
 Foreign corporations, revocation of certificate for failure to file, 8.16.
 Appraiser, valuation of shares of dissenting shareholders, 5.12.
 Cooperative Associations, this index.
 Dividends, consuming assets corporation, 2.39.
 Failure to file reports, grounds for dissolution, 7.01.
 Forms, promulgated by secretary of state, 9.06.
 Nonprofit Corporations, this index.
- RESERVATION OF POWER**
 State power, Legislature to regulate corporations, etc., 9.12.
- RESERVE ACCOUNTS**
 Consuming assets corporation, dividends, accounting, 2.39.
- RESERVED NAME**
 Name of Corporation, this index.
- RESERVES**
 Depreciation, dividends, consuming assets corporation, 2.39.
- RESOLUTIONS**
 Directors, this index.
- RESTATED ARTICLES OF INCORPORATION**
 Articles of Incorporation, this index.
- RESTRAINING ORDER**
 Injunction, generally, this index.
- RESTRAINT OF TRADE**
 Anti-Trust Laws, generally, this index.
- REVIEW**
 Appeals, generally, this index.
- REVOCAION**
 Certificates of authority. Foreign Corporations, this index.
 Voluntary dissolution. Dissolution, this index.
- RIGHT OF WAY**
 Electric light and power companies, Civ. Stat. 1436, 1436a.
 Telegraphs and telephones, Civ.Stat. 1416, 1417.
 Toll roads, public lands, Civ.Stat. 1455.
- RIVERS AND STREAMS**
 Toll roads, Civ.Stat. 1462.
- ROAD COMPANIES**
 Generally, Civ.Stat. 1447 et seq.
- ROADS AND HIGHWAYS**
 Electric light and power companies, right of way, Civ.Stat. 1436a.
 Oil and gas pipelines, Civ.Stat. 1436b.
 Telegraphs and telephones, Civ.Stat. 1416 et seq.
 Toll roads, Civ.Stat. 1457.
 Water mains, Civ.Stat. 1433.
- ROBBERY**
 Telephone lines, alteration or control, Civ.Stat. 1432b.
- SAFETY**
 Electric high voltage lines, Civ.Stat. 1436c.
- SALARIES AND COMPENSATION**
 Educational corporations, power to fix, Civ.Stat. 1302-3.02.
- SALES**
 Assets, this index.
 Close corporations, shares, restrictions, 2.22.
 Cooperative associations, shares, Civ.Stat. 1396-50.01, § 29.
 Foreign corporations, independent contractors, transacting business in state, 8.01.
 Nonprofit corporations, assets, Civ.Stat. 1396-5.09.
 Outside regular course of business, 5.10.
 Regular course of business, 5.09.
 Shares and Shareholders, this index.
 Within or without regular course of business, 5.09, 5.10.
- SCIENTIFIC CORPORATIONS**
 Exemption, 9.14.
 Nonprofit Corporations, generally, this index.
- SCIENTIFIC CORPORATIONS**—Cont'd
 Organization, 2.01.
- SCRIP**
 Fractional shares, issuance, 2.20.
- SEAL**
 Articles of correction, Civ.Stat. 1302-7.01 et seq.
 Certificates of shares, 2.19.
 Conveyances, 5.08.
 Correction, articles of correction, Civ. Stat. 1302-7.01 et seq.
 Facsimile, Civ.Stat. 1302-2.05.
 Foreign corporations, certificate of authority, affidavit, Civ.Stat. 1302-2.08.
 Nonprofit corporations, Civ.Stat. 1396-2.02.
 Conveyances, Civ.Stat. 1396-5.08.
 Not required on conveyances, 5.08.
 Power to have, alter, etc., 2.02.
- SECRETARY OF CORPORATION**
 Officers, Employees and Agents, this index.
- SECRETARY OF STATE**
 Agent for service, 2.11.
 Assistant Secretary of State, 2.11.
 Foreign corporations, 8.10.
 Resulting from merger or consolidation, 5.07.
 Withdrawal from business in state, 8.14.
 Record of processes, notices, etc., 2.11.
 Annual report, filing, 9.14.
 Appeals from, 9.04.
 Applications for withdrawal, foreign corporation, duties, 8.15.
 Articles of amendment,
 Duplicate originals delivered to, 4.05.
 Duties respecting, 4.05.
 Articles of dissolution,
 Filing, 6.07.
 Voluntary dissolution by incorporators, 6.01.
 Articles of incorporation,
 Delivery by incorporators, 3.01, 3.03.
 Filing and other duties after delivery, 3.03.
 Filing fee, 10.01.
 Articles of merger or consolidation, delivery to secretary, duties, etc., 5.04.
 Certificate of authority, foreign corporations, 8.05, 8.06.
 Certificate of withdrawal, foreign corporation, 8.14.
 Certificates and certification,
 Amendment of articles,
 Effect, 4.06.
 Issuance, 4.05.
 Dissolution, voluntary dissolution, 6.01, 6.07.
 Incorporation, issuance, 3.03.
 Interrogatories and answers, disclosing as violation of Act, 9.01.
 Merger or consolidation, 5.04.

INDEX

288

References are to Articles unless otherwise indicated

SECRETARY OF STATE—Cont'd

Certificates and certification—Cont'd
 Merger or consolidation—Cont'd
 Issuance, effect, 5.07.
 Name of corporation giving cause for dissolution or revocation of certificates, 7.02.
 Prima facie evidence, certificates issued by, 9.05.
 Restated certificate of incorporation, 4.07.
 Certified copy, decree of dissolution, filing, 7.10.
 Change of registered office or registered agent, statement filed with, requisites, 2.10.
 Dissolution,
 Decree filed by clerk of court, 7.10.
 Voluntary dissolution, 6.01, 6.07.
 Duties, 9.03.
 Applications for withdrawal, foreign corporation, 8.15.
 Articles of amendment, 4.05.
 Change of registered office or registered agent, requirements, 2.10.
 Consent of shareholders to action without meeting, 9.10.
 Decree of revocation, certificate of foreign corporation, 8.17.
 Documents, time for, 9.07.
 Duplicate statement of cancellation, Redeemable shares, 4.11.
 Treasury shares, 4.11.
 Fees, 10.01.
 Decree of revocation, certificate of authority, foreign corporations, 8.17.
 Resolutions or other documents adopting provisions of Act, 9.14.
 Statement of change of registered office or registered agent of foreign corporation, 8.09.
 Fees, filing fees, 10.01.
 Forms, promulgation by, 9.06.
 Application for certificate of authority, etc., 8.05.
 Application for withdrawal, foreign corporations, 8.14.
 Interrogatories propounded by, 9.01.
 Information therefrom not to be disclosed, 9.02.
 Merger or consolidation,
 Foreign and domestic corporations, plan filed, 5.07.
 Foreign corporation resulting, filing plan, requisites, time of, etc., 5.07.
 Notice,
 Mailed to corporation of certification of default, involuntary dissolution, 7.02.
 Refusal to file documents, 9.04.
 Registered agent, resignation, 2.10.
 Foreign corporation, 8.09.
 Powers, 9.03.
 Process agent. Agent for service, generally, ante.
 Records and Recordation, this index.

SECRETARY OF STATE—Cont'd

Reduction of stated capital, statement of, duties respecting, 4.12.
 Refusal to file documents, etc., appeal, 9.04.
 Registered agent, resignation filed with, etc., 2.10.
 Registered name, filing, fee, etc., 2.07.
 Reorganized corporations, articles of corporation, filing amendments with, 4.14.
 Reserved name,
 Application for, foreign corporations, 8.04.
 Filing, 2.06.
 Restated articles of incorporation, duties respecting, 4.07.
 Statement of cancellation,
 Redeemable shares, duties, 4.10.
 Treasury shares, duties, 4.11.
 Statement of revocation, voluntary dissolution proceedings, 6.05.
 Statements,
 Adoption of Act within five years, duties, 9.14.
 Change of registered office or registered agent of foreign corporation, duties, 8.09.
 Series of shares established, filing with, 2.13.
 Time, filing documents with, 9.07.

SECTIONS

Division of Act into, effect, 1.01; Civ. Stat. 1302-1.01.

SECURITIES

By-laws restricting transfer, recording, 2.22.
 Consolidating corporation shares, conversion to securities of corporation other than new corporation, plan, 5.02.
 Foreign corporations, maintaining transfer offices as not transacting business in state, 8.01.
 Merging corporation shares, conversion to securities of corporation other than surviving corporation, plan, 5.01.

SECURITY

Derivative suits, expenses, 5.14.
 Power to hold property as security for payment of loans or investments, 2.02.

SECURITY FOR COSTS

Shareholders' suits, 5.14.

SENTENCE AND PUNISHMENT

Crimes and Offenses, generally, this index.

SEQUESTRATION

Liens against corporate property for violations of law, enforcement, Civ.Stat. 1302-5.11.

SERVICE

Cooperative Associations, generally, this index.
 Petition, dissenting shareholder, appointment of appraiser to value shares, 5.12.
 Process, generally, this index.

SEWERS, SEWAGE AND SEWER SYSTEMS

Eminent domain, Civ.Stat. 1439.

SHARES AND SHAREHOLDERS

Acquisition by corporation, own shares, powers, 2.02.
 Actions and proceedings,
 Close corporation, 12.35, 12.51 et seq.
 Strike suits, deposit of costs, 5.14.
 Application of Act, adoption of Act within five years; procedure, 9.14.
 Application of Uniform Stock Transfer Act, certificates issued prior to effective date, Civ.Stat. 1302-6.25.
 Articles of incorporation,
 Amendment of articles as to, 4.01, 4.02, 4.03.
 Classes and classification, post.
 Restricting transfer of shares, recording, 2.22.
 Transfer of shares, restrictions on, 2.22.
 Voting, majority required by articles greater than required by act as controlling, 9.08.
 Voting rights, limitation or denial, 2.12.
 Exception, 4.03.
 Assignee, liability, 2.21.
 Authorized shares, 2.12.
 Articles of incorporation,
 Designations of classes, preferences, etc., statement of, 3.02.
 Statement of number authorized, 3.02.
 Defined, 1.02.
 Number, change by amendment of articles, 4.01.
 Par value, increase or decrease by amendment of articles, 4.01.
 Reduction in number, redemption or purchase of redeemable shares, 4.10.
 Books and records, courts, power to enforce, 2.44.
 Bylaws,
 Pre-emptive rights of shareholders, 2.22.
 Restricting transfer of shares, filing fees, 10.01.
 Transfer books, closing, 2.26.
 Transfer of shares, restrictions on, 2.22.
 Cancellation,
 Amendment of articles, 4.01.
 Illegally issued stocks or bonds, Civ. Stat. 1354 et seq.
 Quo warranto, Civ.Stat. 1354 et seq.

References are to Articles unless otherwise indicated

SHARES AND SHAREHOLDERS

—Cont'd
 Cancellation—Cont'd
 Reacquired shares, filing fee, statement of cancellation, 10.01.
 Redeemable shares,
 Filing fee, 10.01.
 Redemption or purchase, statement of cancellation, 4.10.
 Statement in articles of amendment, 4.04.
 Treasury shares, 4.11.
 Certificated, defined, 1.02.
 Certificates and certification, 2.19.
 Close corporation, 12.39.
 Consideration, payment of, condition precedent to issuance, 2.19.
 Fractional shares, issuance, 2.20.
 Grandfather clause, statement requirements, 2.19.
 Restrictions on transfer,
 Copy down certificate, 2.22.
 Description, 2.19.
 Small print, 1.02.
 Statements on front and back, requirements, 2.19.
 Change in shares by amendment of articles, 4.01.
 Classes and classification,
 Articles of incorporation,
 Control of voting, 2.12.
 Designation, preferences, etc., statement of, 3.02.
 Procedure, method of voting, etc., 4.02.
 Certificates, contents, 2.19.
 Change by amendment of articles, 4.01.
 Division into, 2.12.
 Division into series,
 Directors' authority, 2.13.
 Preferred shares, 2.13.
 Exchange of shares, 4.01.
 New classes, creation by amendment of articles, 4.01.
 Preferences, etc., statement in articles, 3.02.
 Reclassification,
 Amendment of articles, 4.01.
 Statement in articles of amendment, 4.04.
 Reduction in classes, filing statement of cancellation on redemption or purchase, 4.10.
 Series, 2.13.
 Filing fee, statement of resolution establishing series, 10.01.
 Special classes authorized, 2.12.
 Voting, post.
 Close Corporations, this index.
 Consent, action required of shareholders without meeting, writing, 9.10.
 Consideration, 2.15.
 Exchange of shares, determination of consideration, 2.15.
 Expenses of organization, reorganization, etc., payment from, 2.18.

SHARES AND SHAREHOLDERS

—Cont'd
 Consideration—Cont'd
 Minimum requirements, 9.14.
 No par value shares, post.
 Par value shares, 2.15.
 Shares issued as dividends, 2.15.
 Stated capital, determination of consideration, 2.15, 2.17.
 Consolidation. Merger and Consolidation, generally, post.
 Conspicuous, defined, 1.02.
 Contribution, shareholders to director, acceptance of improper dividend or distribution of assets with knowledge, 2.41.
 Conversion,
 Consideration, determination, 2.15.
 Consolidation, plan to state basis, 5.02.
 Merger, statement in plan, 5.01.
 Convertible indebtedness, 2.14-1.
 Convertible shares, 2.12.
 Conveyances, authorization by resolution of shareholders, 5.08.
 Cooperative associations, Civ.Stat. 1396-50.01.
 Costs, deposit, strike suits, 5.14.
 Cumulative voting, 2.12, 2.29.
 Amendment of articles of incorporation prohibiting, 2.29.
 Defined, 1.02; Civ.Stat. 1302-1.02.
 Close corporation, 12.51.
 Derivative suits, 5.14.
 Designation, change by amendment of articles, 4.01.
 Directors,
 Authority to divide classes into series, etc., 2.13.
 Change of authority as to establishing series of preferred shares, etc., 4.01.
 Consideration for shares, authority to determine, 2.15.
 Sale, exchange, pledge, etc., authorization by directors, 5.09.
 Shareholders special meetings, calling, 2.24.
 Valuation of property received for shares, conclusiveness, 2.16.
 Dissenting shareholders, 5.11 et seq.
 Actions, deposit of costs, 5.14.
 Anti-trust laws as not nullified or repealed, 5.15.
 Appraisers, valuation of shares, petition for, powers, etc., 5.12.
 Binding effect of corporate action in absence of demand for fair value of shares, 5.12.
 Costs, deposit, 5.14.
 Demand, fair value of shares,
 Approval of action objected to by shareholder, 5.12.
 Withdrawal, 5.13.
 Exclusive remedy, 5.12.
 Judgment, valuation of shares, conclusiveness, 5.12.

SHARES AND SHAREHOLDERS

—Cont'd
 Dissenting shareholders—Cont'd
 List of names and addresses of shareholders dissenting and demanding payment; filing, etc., 5.12.
 Merger and consolidation,
 Domestic and foreign corporations, 5.07.
 Rights against foreign corporation, 5.07.
 Subsidiary or subsidiaries into parent corporation, 5.16.
 Surviving corporation owning all outstanding shares of merging corporations, effect, 5.12.
 Notice, 5.12.
 Payment,
 Effect, 5.12.
 Share dividends, treatment of, 5.13.
 Surrender of shares, effect, 5.12.
 Withdrawal of demand, 5.13.
 Petition, appointment of appraiser to value shares, 5.12.
 Procedure for dissent, 5.12.
 Purchase by corporation of shares of, 2.03.
 Records and recordation, demand, 5.13.
 Restrictions on voting, 5.13.
 Right to dissent,
 Merger or consolidation, 5.11.
 Surviving corporation as owner of all merging corporations, 5.12.
 Sale, mortgage, etc., requiring special authorization of shareholders, 5.11.
 Rights and remedies, 5.13.
 Exclusive remedy, 5.12.
 Existing laws, not abridged, 5.15.
 Not abridged, by provisions governing dissenting shareholders, 5.15.
 Transfer after payment demand, 5.13.
 Uncertificated shares, demand, 5.13.
 Voting restrictions, 5.13.
 Waiver, 5.12, 5.13.
 Withdrawal of demand for payment, 5.13.
 Dissolution proceedings. Dissolution, generally, this index.
 Distribution, cash or property, Civ.Stat. 11358a.
 Dividends, generally, this index.
 Escrow, distribution, Civ.Stat. 1358a.
 Exchange,
 Amendment of articles, 4.01.
 Consideration, determination, 2.15.
 Merger, statement in plan, 5.01.
 Reclassification or cancellation, statement in articles of amendment, 4.04.
 Statement in articles of amendment, 4.04.
 Filing fee, shares, 10.01.
 Indebtedness, convertible indebtedness, 2.14-1.

INDEX

290

References are to Articles unless otherwise indicated

SHARES AND SHAREHOLDERS

—Cont'd
 Insolvent corporations, Civ.Stat. 1302-5.15.
 Inspection, books and records, 2.44.
 Issuance, payment as condition precedent, 2.16.
 Joint tenancy title transfer, Civ.Stat. 1358b.
 Liability of shareholders, 2.41.
 Consideration, legally fixed, 2.21.
 Liquidation,
 Distributive shares, unknown shareholders, deposit with state treasurer, 7.11.
 Shareholders not necessary parties, 7.08.
 Liquidation preferences, 2.12.
 Married women, eligibility, Civ.Stat. 1302-2.01.
 Meetings of shareholders, 2.24.
 Action without meeting, 9.10.
 Amendment of articles, 4.02.
 Annual meeting, 2.24.
 Action by shareholder to compel, 2.24.
 Amendment of articles, notice, 4.02.
 Directors,
 Classification of terms, 2.33.
 Election of, 2.31.
 Filling, vacancies, 2.34.
 Authorizing sale, lease, mortgage, etc., outside regular course of business, 5.10.
 By-laws, describing place of, 2.24.
 Calling, 2.24.
 Closing transfer books and fixing record date, determination of shareholders entitled to notice or to vote, 2.26.
 Conference telephones or similar means of communication, 9.10.
 Court order, 2.24.
 Disposition of assets outside regular course of business, 5.10.
 Dissolution, failure to hold annual meeting as not working dissolution, 2.24.
 Merger or consolidation, voting on proposed plan, 5.03.
 Notice, 2.25.
 Amendment of articles, 4.02.
 Dissolution, voluntary, 6.03.
 Merger and consolidation, 5.03.
 Proposed sale, lease, exchange, etc. of property or assets, 5.10.
 Reduction of stated capital, 4.12.
 Revocation of dissolution proceedings, 6.05.
 Place, 2.24.
 Quorum, 2.28.
 Reduction of stated capital, 4.12.
 Special meetings, 2.24.
 Filling vacancies, directors, 2.34.
 Telecommunications, conference telephones or similar means, 9.10.
 Time, annual meeting, 2.24.

SHARES AND SHAREHOLDERS

—Cont'd
 Meetings of shareholders—Cont'd
 Validity of action taken, unaffected by failing to comply with voting list requirements, 2.27.
 Merger and consolidation,
 Capital and surplus, allocation, 2.17.
 Dissent, 5.11.
 Exchanging or converting, 5.01.
 Subsidiary or subsidiaries into parent corporation, 5.16.
 Minimum requirements, consideration, 9.14.
 No par value shares,
 Change to par value, etc., amendment of articles, 4.01, 4.03.
 Consideration,
 Capital surplus, allocation to, 2.17.
 Fixing, 2.15.
 Stated capital, 2.17.
 Convertible shares, 2.12.
 Notice,
 Amendment of articles, 4.02.
 Dissenting shareholders, 5.12.
 Uncertificated shares, 2.19.
 Waiver of, 9.09.
 Number of shares authorized, 2.12.
 Options respecting shares, 2.14-1.
 Restrictions, 2.22.
 Other corporations,
 Powers of corporation to purchase, subscribe for, hold, vote, etc., 2.02.
 Sale, exchange, pledge, etc., regular course of business, 5.09.
 Outstanding shares,
 Articles of amendment to state number, 4.04.
 Corporate owned shares, payment, issuance, 2.16.
 Redemption, procedure, 4.08.
 Par value shares,
 Change in value, amendment of articles, 4.01.
 Change to no par value, amendment of articles, 4.01, 4.03.
 Consideration fixed by directors, 2.15.
 Stated capital, 2.17.
 Payment, 2.16.
 Commencement of business, payment as condition precedent to, 3.02, 3.05.
 Dissenting shareholders, ante.
 Pledged shares, voting, 2.29.
 Power to issue shares, number, 2.12.
 Pre-emptive rights, 2.22-1.
 Amendment of articles, limiting or denying, 4.01.
 Limitation or denial of right, recital in articles, 3.02.
 Stating conditions on certificates, 2.19.
 Preferred shares,
 Amendment of articles,
 Directors, authorizing creation of new classes, preferences, etc., 4.01.

SHARES AND SHAREHOLDERS

—Cont'd
 Preferred shares—Cont'd
 Amendment of articles—Cont'd
 Division into series and designations of series, etc., 4.01.
 Articles of incorporation, variation, relative rights and preferences as between different series, fixed by, 2.13.
 Authorized, 2.12.
 Classes, 2.12.
 Division into series, 2.13.
 Cumulative dividends, 2.12.
 Dividends, preferences as to, 2.12.
 Liquidation preferences,
 Redeemable shares, 2.12, 4.09.
 Stated capital, 2.17.
 Relative rights and preferences in different series of same class, 2.13.
 Series, 2.13.
 Voting, 2.13.
 Pre-incorporation subscriptions, filing of articles by secretary of state as acceptance, 2.14.
 Professional associations, Civ.Stat. 1528f.
 Professional corporations, Civ.Stat. 1528e.
 Purchase by corporation of own shares, Directors' liability for excessive payment, 2.41.
 Restrictions on, 2.03.
 Quo warranto, illegally issued stocks or bonds, Civ.Stat. 1354 et seq.
 Quorum, meetings of shareholders, 2.28.
 Reacquired shares, statement of cancellation, filing fee, 10.01.
 Receivership proceedings, shareholders as not necessary parties, 7.08.
 Reclassification of shares,
 Amendment of articles, 4.01.
 Statement in articles of amendment, 4.04.
 Records and recording, by-laws restricting transfer of shares, 2.22.
 Redeemable shares,
 Cancellation, statement to be filed, filing fee, 10.01.
 Liquidation preference, 2.12.
 Redemption limited to, 4.09.
 Procedure for redemption, 4.08.
 Redemption or purchase,
 By corporation, 2.02.
 Cancellation of shares, 4.10.
 Statement filed, effect, 4.10.
 Effect as to rights and status of shareholders, 4.08.
 Insolvency as limitation on, 4.09.
 Reduction of state capital by, 4.10.
 Restrictions on, 4.09.
 Stated capital reduced by, effect, 4.10.
 Reduction of number of shares, cancellation, redemption or purchase, 4.10.
 Refusals respecting shares, restrictions, 2.22.

References are to Articles unless otherwise indicated

SHARES AND SHAREHOLDERS

—Cont'd

Reorganization proceedings, amendment of articles of incorporation, 4.14.
 Resolutions, uncertificated shares, 2.19.
 Restrictions on transfer, 2.22.
 Articles of incorporation, amendment, 4.01.
 Rights, 2.14–1.
 Sales,
 Authorization by shareholders, 5.10.
 Consent of shareholders, 5.09, 5.10.
 Outside regular course of business, consent of shareholders required, 5.10.
 Regular course of business, consent of shareholders not required, 5.09.
 Right to dissent, 5.11.
 Scrip for fractional shares, 2.20.
 Series, statement respecting, etc., 3.02.
 Special classes of shares. Preferred shares, generally, ante.
 Stock rights, power to create and issue, 2.14–1.
 Strike suits, deposit of costs, 5.14.
 Subscription for shares, 2.14.
 Suits, strike suits, deposit of costs, 5.14.
 Termination, close corporation, agreements, 12.36.
 Transfer books,
 Closing and fixing record date, 2.26.
 Prima facie evidence, 2.27.
 Transferee, liability of, 2.21.
 Transfers, 2.22.
 Treasury shares,
 Cancellation, 4.11.
 Consideration for issuance, 2.15.
 Defined, 1.02.
 Dissenting shareholders, acquisition by corporation, 5.12.
 Issued shares, treasury shares deemed to be but not outstanding shares, 1.02.
 Preemptive rights of shareholder to acquire unissued, restrictions, etc., 2.22.
 Sale to officers or employees without prior offer to shareholders, 2.22.
 Voting of prohibited, 2.29.
 Trusts and trustees, distribution, Civ. Stat. 1358a.
 Unanimous consent of shareholders effective without meeting, 9.10.
 Uncertificated shares, 2.19.
 Consideration, 2.21.
 Defined, 1.02.
 Dissenting shareholders, demand, 5.13.
 Fractional shares, 2.20.
 Underwriting, expenses, payment out of consideration received, effect, 2.18.
 Unissued shares,
 Cancellation, effect, 4.10.
 Dividends, payment in on issued shares, 2.38.
 Sale to officers or employees without prior offer to shareholders, etc., 2.22.

SHARES AND SHAREHOLDERS

—Cont'd

Valuation, consideration received for shares, conclusiveness, 2.16.
 Voluntary dissolution by consent of shareholders, 6.02.
 Voting, 2.29.
 Articles of amendment, statement of number of shares voted for and against, 4.04.
 Articles of incorporation,
 Limitation or denial of voting rights, 2.29.
 Exception, 4.03.
 Requirement of greater or lesser than in act as controlling, 9.08.
 Classes and classification,
 Amendment of articles, 4.02 et seq.
 Cancellation of shares, 4.03.
 Majority required, articles as controlling, 9.08.
 Partial liquidation, 2.40.
 Closing transfer books and fixing record date, determination of right to vote, 2.26.
 Cumulative voting, 2.29.
 Deadlock, failure to elect directors, appointment of receiver, 7.05.
 Dissenting shareholders, restrictions, 5.13.
 Distribution, partial liquidation, 2.40.
 Fiduciaries,
 Corporation's own stock held by it as fiduciary, 2.29.
 Shares held by fiduciaries, 2.29.
 Foreign corporations, voting shares in Texas corporation owned by it, 2.29.
 Fractional voting, 2.20, 2.29.
 Limitation or denial by articles, 2.29.
 Majority required, articles as controlling over act, 9.08.
 Merger or consolidation, domestic corporations, 5.03.
 Multiple voting, 2.29.
 Other corporations, shares owned by, 2.29.
 Pledged shares, 2.29.
 Preferences, 2.13.
 Preferred shares, 2.13.
 Proxies, 2.29.
 Receivers, shares in name of, 2.29.
 Revocation of voluntary dissolution, 6.05.
 Rights, limitation or denial by articles of incorporation, 2.12.
 Scrip as not authorizing, 2.20.
 Special classes, 2.13.
 Stated capital, reduction of, 4.12.
 Statement of number voted for or against amendment, 4.04.
 Subsidiary corporations, shares owned by, 2.29.
 Unanimous vote, written consent of shareholders without meeting as equivalent of, 9.10.
 Voting trusts, 2.30.

SHARES AND SHAREHOLDERS

—Cont'd

Voting agreements, 2.30.
 Voting list, 2.27.
 Voting trusts, 2.30.
 Waste water corporations, Civ.Stat. 1512.
 Watering stock, Civ.Stat. 1353.
 Wholly owned subsidiaries, share payment, issuance, 2.16.

SHORT TITLE

Texas Business Corporation Act, 1.01.
 Texas Miscellaneous Corporation Laws Act, Civ.Stat. 1302–1.01.

SIGNATURES

Affidavit, certificate of authority, foreign corporations, Civ.Stat. 1302–2.08.
 Articles of correction, Civ.Stat. 1302–7.01.
 Certificates of shares, 2.19.
 Cooperative associations, articles of incorporation, Civ.Stat. 1396–50.01, § 8.
 Facsimile signature, corporate securities, Civ.Stat. 1302–2.05.
 Incorporators, 3.01.
 Shareholders, consent in writing to action without meeting, 9.10.

SOCIAL CORPORATIONS

Exemption, 9.14.
 Organization, 2.01.

SOCIETIES

Associations and Societies, generally, this index.

SOLAR ENERGY

Standards, Civ.Stat. 1446c–1.

SPANISH

Use of word in corporate name, Civ.Stat. 1302–3.01.

SPECIFIC PERFORMANCE

Close corporation, 12.52.

STANDARDS

Solar energy, Civ.Stat. 1446c–1.

STATE AGENCIES

Assistance, audits, Civ.Stat. 1396–2.23B.
 Defined, corporations assisting, Civ.Stat. 1396–2.23B.
 Nonprofit corporations, audits, Civ.Stat. 1396–2.23B.

STATE BAR

Assistance, audits, Civ.Stat. 1396–2.23B.
 Nonprofit corporations, audits, Civ.Stat. 1396–2.23B.

STATE DEPARTMENTS

Assistance, audits, Civ.Stat. 1396–2.23B.
 Nonprofit corporations, audits, Civ.Stat. 1396–2.23B.

STATE TREASURER

Generally, 7.11.

INDEX

292

References are to Articles unless otherwise indicated

STATED CAPITAL

Change by amendment, statement in articles of amendment, 4.04.
 Conversion of shares, 2.12, 2.15.
 Defined, 1.02; Civ.Stat. 1302-1.02.
 Determination of amount, 2.15, 2.17.
 Filing fee, statement of reduction, 10.01.
 Increase, mode of, 2.17.
 Merger, 2.17.
 Redemption or purchase of redeemable shares, etc., 4.10.
 Reduction,
 Amendment of articles,
 Reduction without amendment, 4.12.
 Cancellation of shares,
 Redeemable shares, 4.10.
 Reduction without cancellation, 4.12.
 Treasury shares, statement of cancellation, 4.11.
 Directors' resolution, no amendment or cancellation of shares, 4.12.
 Maximum amount of reduction, 4.12.
 Redemption or purchase of redeemable shares, 4.10.
 Restrictions on reduction, 4.10.
 Shareholders' vote, reduction by, 4.12.
 Statement of reduction, 4.12.
 Filing fee, 10.01.
 Statement of, filing fee, 10.01.
 Surplus, reduction surplus, 4.13.
 Transfer to share dividends, 2.38.

STATEMENTS

Articles of correction, Civ.Stat. 1302-7.01 et seq.
 Cancellation of shares,
 Redemption or purchase of shares, 4.10.
 Treasury shares, 4.11.
 Close corporation,
 Operation, 12.34.
 Termination, 12.21 et seq.
 Correction, articles of correction, Civ. Stat. 1302-7.01 et seq.
 Designation of office, 9.14.
 Filing,
 Adoption of Act within five years, 9.14.
 Cancellation,
 Redemption of purchase of redeemable shares, 4.10.
 Treasury shares, 4.11.
 Change of registered office or registered agent, foreign corporations, 8.09.
 Intent to dissolve, 6.04.
 Reduction of stated capital, effect, 4.12.
 Revocation, voluntary dissolution proceedings, 6.05.
 Financial Statements, generally, this index.
 Office, designation, 9.14.
 Registered agent,
 Change of address, 2.10-1.
 Designating, 9.14.
 Secretary of State, this index.

STOCK AND STOCKHOLDERS

Shares and Shareholders, generally, this index.

STOCK BONUS PLANS

Power of corporation, 2.02.

STOCK RIGHTS

Power to create and issue, 2.14-1.

STREET RAILROADS

Incorporation, purposes, Civ.Stat. 1302-3.05.

STREETS AND ALLEYS

Oil and gas pipelines, Civ.Stat. 1436b.
 Telegraphs and telephones, Civ.Stat. 1416 et seq.
 Water mains, Civ.Stat. 1433.

STRIKE SUITS

Deposit of costs, 5.14.

SUBMERGED OR OVERFLOWED LANDS

Causeways, Civ.Stat. 1470.

SUBSCRIBERS

Defined, 1.02.
 Liability, 2.21.

SUBSCRIPTIONS

Defined, 1.02.
 Liability on, 2.21.

SUBSECTIONS

Division of Act into, effect, 1.01; Civ. Stat. 1302-1.01.

SUBSIDIARY CORPORATIONS

Liability for indebtedness of parent, subsidiary or affiliated corporation, Civ. Stat. 1302-2.06.
 Merger into parent corporation, 5.16.
 Wholly owned subsidiaries, shares, payment, issuance, 2.16.

SUBURBAN RAILROADS

Incorporation, purposes, Civ.Stat. 1302-3.05.

SUITS

Actions and Proceedings, generally, this index.

SUPREME COURT

Assistance, audits, Civ.Stat. 1396-2.23B.
 Nonprofit corporations, audits, Civ.Stat. 1396-2.23B.

SURPLUS

Capital surplus,
 Application to reduce deficit, 4.13.
 Defined, 1.02.
 Dividend out of in partial liquidation, 2.40.
 Merger of corporation, etc., allocation to earned surplus, 2.17.
 Purchase own shares as affected by, 2.03.

SURPLUS—Cont'd

Capital surplus—Cont'd
 Reduction of stated capital, 4.13.
 Defined, 1.02.
 Determination, 2.17.
 Earned surplus,
 Application to reduce deficit, 4.13.
 Defined, 1.02.
 Dividends payable only out of unreserved and unrestricted surplus, 2.38.
 Merger of corporations, etc., allocation from capital surplus, 2.17.
 Reserve,
 Creation and abolition, 4.13.
 Unavailable for payment of dividends or other distributions, etc., 4.13.
 Merger or consolidation, availability of surplus of merging or consolidating corporations for dividends, 5.06.
 Purchase by corporation of own shares, effect, 2.03.
 Reduction surplus,
 Application to reduce deficit, 4.13.
 Creation by reduction of stated capital, 4.13.
 Defined, 1.02, 4.13.
 Directors, liability for improper payment or distributions from, 2.41.
 Contribution from shareholders receiving payments, 2.41.
 Dividend out of, partial liquidation, 2.40.
 Purchase of own shares as affected by, 2.03.
 Share dividends, effect, 2.38.
 Transfer to stated capital,
 Merged or consolidated corporations, 5.06.
 Share dividends, 2.15, 2.38.

SURVEYS AND SURVEYORS

Toll roads, Civ.Stat. 1456.

SURVIVAL

Dissolved corporation, limited survival after dissolution, Civ.Stat. 1302-2.07.

SUSPENSION

Students, educational corporations, Civ. Stat. 1302-3.02.

TAXATION

Cooperative associations, Civ.Stat. 1396-50.01, § 44.
 Franchise Taxes, generally, this index.
 Housing corporations, Civ.Stat. 1524d.

TEACHERS

Educational corporations, appointment and removal, Civ.Stat. 1302-3.02.

TELECOMMUNICATIONS

Meetings by conference telephone or similar means, 9.10.

TELEGRAPHS AND TELEPHONES

Generally, Civ.Stat. 1416 et seq.

References are to Articles unless otherwise indicated

TELEGRAPHS AND TELEPHONES

—Cont'd
 Armed suspects or barricades, Civ.Stat. 1432b.
 Connections, Civ.Stat. 1426 et seq.
 Emergencies,
 911, Civ.Stat. 1432c.
 Party lines, Civ.Stat. 1432a.
 Fraud, Civ.Stat. 1446b.
 Hostages, telephone lines, alteration or control, Civ.Stat. 1432b.
 Messages, transmissions between companies, Civ.Stat. 1426 et seq.
 911 emergency, Civ.Stat. 1432c.

TELEPHONE COOPERATIVE ASSOCIATIONS

Generally, Civ.Stat. 1528c.

TERM OF OFFICE

Directors, 2.32.
 Nonprofit corporations, directors, Civ. Stat. 1396-2.15.

TERMINATION

Close corporation, 12.21 et seq., 12.52.
 Shareholders agreement, 12.36.
 Corporate activities and existence, powers of corporation, 2.02.
 Existence of corporation, decree of voluntary dissolution, liquidation proceeding, 7.09.

TEXAS BUSINESS CORPORATION ACT

Adoption of, application for, filing fee, 10.01.
 Application of Act, 9.14, 9.15.
 Foreign and interstate commerce, 9.11.
 Division into parts, articles, sections, etc., 1.01.
 Partial invalidity, effect, 9.13.
 Short title, 1.01.
 Statement of adoption of Act within five years, contents and requisites, 9.14.

TEXAS MISCELLANEOUS CORPORATION LAWS ACT

Generally, Civ.Stat. 1302-1.01 et seq.
 Application of Act, Civ.Stat. 1302-1.03.
 Cemetery companies, Civ.Stat. 1302-3.03.
 Definitions, Civ.Stat. 1302-1.02.

THREATS

Gas, electric or water service, disruption, Civ.Stat. 1446a.

TIME

Answering interrogatories propounded by secretary of state to directors or officers, 9.01.
 Application for renewal of registered name, 2.08.
 Filing, this index.
 Lien against corporate property for fines, penalties and forfeitures, Civ.Stat. 1302-5.08.
 Lodges, duration, Civ.Stat. 1405.

TIME—Cont'd

Payment, judgment determining value of shares, dissenting shareholders, 5.12.
 Petition, dissenting shareholders, appointment of appraiser to value shares, 5.12.
 Return of process, service on secretary of state as agent for foreign corporation, 8.10.
 Toll road corporations, Civ.Stat. 1452.
 Voluntary dissolution by incorporators, 6.01.
 Voting agreement among shareholders, expiration, 2.30.

TOLL ROADS

Generally, Civ.Stat. 1447 et seq.

TRADE ZONES

Foreign trade zones, Civ.Stat. 1446.1 et seq.

TRANSACTING BUSINESS IN TEXAS

Activities not constituting, 8.08.
 Dissolution for, beyond scope of purposes expressed in articles, 7.01.
 Foreign corporations, cessation of authority, issuance of certificate of withdrawal, 8.15.

TRANSFER AGENTS

Depository of redemption price of shares, 4.08.

TRANSFER BOOKS

Closing and fixing record date, 2.26.

TRANSFERS

Close corporations, shares, restrictions, 2.22.
 Cooperative associations, shares and membership, Civ.Stat. 1396-50.01, § 29.
 Enforcement, exclusive right of trustee to sue, Civ.Stat. 1302-2.04.
 Property to or by corporation, ultra vires as defense, 2.04.
 Shares and Shareholders, this index.

TRAVIS COUNTY DISTRICT COURT

Appeal from rulings of secretary of state, trial de novo, 9.04.
 Decree of dissolution, 7.01.

TREASURERS

Corporate treasurer, election or appointment, 2.42.
 Nonprofit corporations, defined, Civ.Stat. 1396-1.02.
 State treasurer, 7.11.

TREASURY SHARES

Shares and Shareholders, this index.

TREES

Toll roads, cutting, Civ.Stat. 1457.

TRIAL DE NOVO

Appeals from secretary of state, 9.04.

TRUST AND TRUSTEES

Actions, corporate trust indenture, enforcement, Civ.Stat. 1302-2.04.
 Educational corporation trustees, powers and duties, Civ.Stat. 1302-3.02.
 Incorporators, 3.01.
 Liability as shareholder or subscriber, 2.21.
 Lodges, Civ.Stat. 1401.
 Mutual trust investment companies, Civ. Stat. 1528i.
 Nonprofit corporations, Civ.Stat. 1396-2.14.
 Shares and shareholders, distribution, Civ.Stat. 1358a.
 Voting of shares held by, 2.29.

TRUST COMPANIES

Banks and Trust Companies, generally, this index.

TRUST DEEDS

Enforcement, exclusive right of trustee to sue, Civ.Stat. 1302-2.04.

ULTRA VIRES

Generally, 2.04.
 Nonprofit corporations, defenses, Civ. Stat. 1396-2.03.

UNCERTIFICATED SHARES

Shares and Shareholders, this index.

UNDERWRITING

Shares, expenses, 2.18.

UNIFORM COMMERCIAL CODE

Investment securities,
 Amendment not effected by Act, 2.22.
 Repeal, not effected by Act, 2.22.

UNIFORM STOCK TRANSFER ACT

Amendment not effected by this Act, 2.22.
 Certificates issued prior to effective date, application of law, Civ.Stat. 1302-6.25.
 Partial invalidity, Civ.Stat. 1302-6.26.
 Repeal, not effected by this Act, 2.22.

UNITED STATES

Power of corporation to aid in war, 2.02.

UNIVERSITIES

Colleges and Universities, generally, this index.

USURY

Defense to action or proceeding, Civ. Stat. 1302-2.09.

UTILITIES

Public Utilities, generally, this index.

VACANCIES

Directors, 2.34.
 Educational corporations, filling, Civ. Stat. 1302-3.02.
 Nonprofit corporations, directors, Civ. Stat. 1396-2.16.

INDEX

294

References are to Articles unless otherwise indicated

VENUE

Appeals from rulings of secretary of state, 9.04.
Dissolution, involuntary, 7.03.
Foreign corporations, revocation of certificate of authority, 7.03, 8.16.
Liquidation of assets and receivership, 7.06.
Nonprofit corporations, involuntary dissolution, Civ.Stat. 1396-7.03.

VERIFICATION

Articles of correction, Civ.Stat. 1302-7.01 et seq.
Dissolution, articles of voluntary dissolution by incorporators, 6.01.
Incorporators, 3.01.

VERIFIED

Defined, 1.02.

VESTED RIGHTS

Repeal of prior acts, effect upon, 9.16.

VETERAN

Use of word in corporate name, Civ.Stat. 1302-3.01.

VETERANS CORPORATIONS

Names, use by other corporations, written permission, Civ.Stat. 1302-3.01.

VETERINARIANS

Professional corporations, Civ.Stat. 1528e.

VICE PRESIDENT OF CORPORATION

Nonprofit Corporations, this index.
Officers, Employees and Agents, this index.

VOLUNTARY DISSOLUTION

Dissolution, this index.

VOTING

Shares and Shareholders, this index.

VOTING AGREEMENTS

Shareholders' authority to create, etc., 2.30.

VOTING LIST

Shares and shareholders, 2.27.

VOTING TRUSTS

Books and records, holder of beneficial interest regarded as shareholder, 2.44.
Inspection, right of by shareholders, 2.30.
Purpose, duration, etc., 2.30.

VOTING TRUSTS—Cont'd

Shareholders' authority to create, etc., 2.30.

WAIVER

Dissenting shareholders, 5.12, 5.13.
Nonprofit corporations, notice, Civ.Stat. 1396-9.09.
Notice, shareholder or director, notice to, 9.09.

WAR

Use of word in corporate name, Civ.Stat. 1302-3.01.

WAREHOUSE RECEIPTS

Crimes and offenses, dealing, Civ.Stat. 1528h.

WARRANT

Comptroller of public accounts, issuance, claims of shareholder, etc., whose name unknown on dissolution or liquidation, 7.11.

WASTE WATER CORPORATIONS

Generally, Civ.Stat. 1508 et seq.

WATER COMPANIES

Generally, Civ.Stat. 1433 et seq.

WATERED STOCK

Generally, Civ.Stat. 1353.

WATERS AND WATERCOURSES

Telegraphs and telephones, Civ.Stat. 1416 et seq.

Waste water corporations, Civ.Stat. 1508 et seq.

WATERWORKS AND WATER SUPPLY

Generally, Civ.Stat. 1433 et seq.
Depositories, Civ.Stat. 1434a.
Disruption, picketing, threats or intimidation, Civ.Stat. 1446a.

WINDING UP

Dissolved corporation's affairs, Civ.Stat. 1302-2.07.

WITHDRAWAL FROM STATE

Foreign Corporations, this index.

WORDS AND PHRASES

Articles of incorporation, 1.02.
Authorized shares, 1.02.
Business of raising cattle and owning land thereof, 2.01.
Cancel, 1.02.
Capital surplus, 1.02.
Certificate of authority, Civ.Stat. 1302-1.02.

WORDS AND PHRASES—Cont'd

Certificated shares, 1.02.
Charter, Civ.Stat. 1302-1.02.
Close corporation provision, management, 12.02.
Close corporations, management, 12.02.
Conspicuous, 1.02.
Consuming assets corporation, 1.02.
Corporations, 1.02.
Indemnity, 2.02-1.
Court of competent jurisdiction, close corporations, 12.51.
Custodian, close corporation, 12.51.
Derivative suit, 5.14.
Directors, indemnity, 2.02-1.
Domestic corporation, 1.02.
Earned surplus, 1.02.
Expenses,
Derivatives suits, 5.14.
Indemnity, 2.02-1.
Foreign corporation, 1.02.
Insolvency, 1.02.
Liability for indebtedness of parent, subsidiary or affiliated corporation, Civ. Stat. 1302-2.06.
Net assets, 1.02.
Official capacity; indemnity, 2.02-1.
Ordinary corporation, close corporation, 12.02.
Paid-up capital, Civ.Stat. 1302-1.02.
Permit to do business, Civ.Stat. 1302-1.02.
Proceeding, indemnity, 2.02-1.
Provisional director, close corporation, 12.51.
Reduction surplus, 1.02, 4.13.
Shareholders, close corporation, 12.51.
Shareholders agreement, close corporation, 12.02.
Shares, 1.02; Civ.Stat. 1302-1.02.
State agency, corporation assisting, Civ. Stat. 1396-2.23B.
Stated capital, 1.02.
Subscriber, 1.02.
Subscription, 1.02.
Surplus, 1.02.
Surviving corporation, 5.01.
Treasury shares, 1.02.
Uncertificated shares, 1.02.
Verified, 1.02.

WORLD WAR

Use of word in corporate name, Civ.Stat. 1302-3.01.

WRITING

Answers, interrogatories, secretary of state, 9.01.

ZONES

Foreign trade zones, Civ.Stat. 1446.1 et seq.