

# Texas Historical Statutes Project

1960 SUPPLEMENT  
TO  
VERNON'S TEXAS STATUTES 1948



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VERNON'S  
TEXAS STATUTES  
1960 SUPPLEMENT

Including General and Permanent Laws,  
of the  
56th Legislature, Regular Session  
and  
First, Second and Third Called Sessions

TABLES and INDEX

Supplementing  
Vernon's Texas Statutes 1948  
and  
1950, 1952, 1954, 1956 and 1958 Supplements

KANSAS CITY, MO.  
VERNON LAW BOOK COMPANY

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## 1960 SUPPLEMENT

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This Supplement to Vernon's Texas Statutes includes the laws of a general and permanent nature enacted at the Regular Session and the First, Second and Third Called Sessions of the 56th Legislature. The sessions convened and adjourned as follows:

	Convened	Adjourned
Regular Session .....	January 13, 1959	May 12, 1959
First Called Session .....	May 18, 1959	June 16, 1959
Second Called Session .....	June 17, 1959	July 16, 1959
Third Called Session .....	July 17, 1959	Aug. 6, 1959

This volume supplements the 1948 edition of Vernon's Texas Statutes and the 1950, 1952, 1954, 1956 and the 1958 Supplements. Many important new laws were enacted at the 1959 sessions including the Non-Profit Corporation Act and the new Title 122A, Taxation-General.

The constitutional amendments approved by the voters on November 4, 1958 are also included.

To assist the user in readily locating any article or section affected by legislation from 1949 through 1959, a special Table of Articles has been prepared and is printed on the colored pages herein.

Vernon's Texas Statutes 1948 and Supplements are under the same classification and arrangement as Vernon's Annotated Texas Statutes. This means that users of this popular edition may go from any article therein to the same article in Vernon's Annotated Texas Statutes where the complete constructions of the law by the state and federal courts, as well as complete historical data relative to the origin and development of the law, are conveniently available.

The same practical features which have served to popularize the 1948 Edition, such as a complete index, tables, etc., are continued in the Supplements.

The Publisher extends appreciative thanks to the office of the Secretary of State, as well as to other state officials, for guidance and suggestions during the preparation of this work.

VERNON LAW BOOK COMPANY

March, 1960.

## Cite This Book by Article

- Vernon's Texas Civ. St., 1960 Supp. Art. —.
- Vernon's Texas P. C., 1960 Supp. Art. —.
- Vernon's Texas C. C. P., 1960 Supp. Art. —.
- Vernon's Texas Prob. Code, § —.
- Vernon's Texas Bus. Corp. Act, Art. —.
- Vernon's Texas Elec. Code, Art. —.
- Vernon's Texas Ins. Code, Art. —.
- Vernon's Texas Non-Profit Corp., Art. —.
- Vernon's Texas Tax-Gen., Art. —.

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23	Am.	1958	118a, § 3	Am.	1956	
29b	New	1958	§ 9	Am.	1956	
29c	New	1958	§ 12	Am.	1954	
41a	Am.	1960	§ 12	Am.	1956	
§§ 4, 5	Am.	1952	118b, § 24	Am.	1956	
§ 8	Am.	1952	§ 24A	New	1956	
§ 15	Am.	1952	118c-1, § 2	Am.	1956	
46a, § 1a	Am.	1952	§ 10	Am.	1954	
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97	Am.	1950	126	Am.	1960	
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VERNON'S TEXAS STATUTES

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129	Am.	1960	199(11)	Am.	1956
130	Am.	1960	199(11)	Am.	1958
131	Am.	1960	199(11)	Am.	1960
131a	New	1960	199(14)	Am.	1952
132	Am.	1960	199(14)	Am.	1956
133	Am.	1960	199(19),		
134	Rep.	1960	§§ 8-12	New	1950
135	Am.	1960	§§ 8-12	Rep.	1952
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§ 7	Am.	1956	199(32)	New	1952
§ 8	Am.	1956	199(33)	Am.	1956
§ 10	Am.	1956	199(36)	Am.	1950
§ 15	Am.	1956	199(37)	Am.	1956
135b-2	New	1950	199(38)	Am.	1956
	Rep.	1952	199(43), § 5	Am.	1960
135b-3	New	1952	199(51)	Am.	1950
	Rep.	1954	§ 2	Am.	1954
135b-4	New	1954	199(58)	Am.	1956
135b-4	Am.	1958	199(62)	Am.	1956
135c	New	1956	199(63)	Am.	1952
149j	New	1952	199(64)	New	1958
149k	New	1952	199(70)	Am.	1950
165a-4			199(72)	Am.	1960
§ 5(H)	Am.	1960	199(75)	Am.	1950
§ 7	Am.	1960	199(75)	Am.	1956
165-4a	Am.	1950	199(76)	Am.	1950
§ 2	Am.	1952	199(77)	Am.	1950
§ 2	Am.	1960	199(79)	Am.	1950
165-4b	New	1950	199(83)	Am.	1954
165-6	New	1950	199(85)	Am.	1950
165-7	New	1950	199(87)	Am.	1950
	Rep.	1954	199(88)	New	1952
165-8	New	1958	199(88)	Am.	1956
§ 9	Am.	1960	199(102)	Am.	1954
165a-8	New	1950	199(102)	Am.	1956
165a-9	New	1952	199(105)	Am.	1950
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165a-10	New	1954	199(106)	Am.	1960
§ 1	Am.	1956	199(107)	Am.	1950
176B	New	1950	199(109)	Am.	1956
179a	New	1958	199(112)	Am.	1956
179b	New	1958	199(114) (L)	New	1954
190a-2	New	1958	199(115)	New	1950
190d-1	New	1960	199(117), § 4	Rep.	1950
190j	New	1960	199(118)	New	1950
192b	Am.	1952	199(120)	New	1958
193	Am.	1952	199(121)	New	1960
195	Am.	1952	199(122)	New	1958
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199(5)	Am.	1952	199(131)	New	1958
199(5)	Am.	1954	199(132)	New	1952
199(6)	New	1958	199(132)	Am.	1956
199(7)	Am.	1950	§ 6	Am.	1960
199(7)	Am.	1954	199(134)	New	1950
199(9)	Am.	1954	199(135)	New	1952
199(9)	Am.	1956	199(135)	Am.	1954
§ 9	Am.	1950	§ 1	Am.	1958
199(10)	Am.	1960	§ 3	Am.	1958
199(11)	Am.	1950	§ 5	Am.	1958
199(11)	Am.	1952	§§ 7-9	Am.	1958

**ARTICLES AFFECTED FROM 1949 TO 1959**

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199(143)	New	1956	326k-40	New	1958
199(145)	New	1956	326k-41	New	1960
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199(150)	New	1958	326k-42	New	1960
199(153)	New	1956	326k-43	New	1960
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199(155)	New	1958	331e	New	1950
199(156)	New	1958	331f	New	1950
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200a,			§ 2a	New	1960
§ 1	Am.	1960	331h	New	1954
§ 5a	New	1958	331i	New	1960
249a,			342-101A	New	1952
§§ 2-5	Am.	1952	342-109	Am.	1960
§§ 3-14	Am.	1956	342-112	Am.	1952
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§§ 12, 13	Am.	1952	342-201		
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260-1,			342-205	Am.	1952
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§ 1(1)	Am.	1958	342-208A	New	1952
§ 2	Am.	1956	342-208A	Rep.	1960
§ 4	Am.	1956	342-301	Am.	1958
279a	Am.	1958	342-303	Am.	1960
306	Am.	1956	342-314	New	1956
307A	Am.	1958	342-402	Am.	1960
319	Am.	1952	342-404	Am.	1960
320a-1	Am.	1950	342-406	Am.	1960
322c	New	1950	342-408	Am.	1960
326k-12	Am.	1950	342-501A	New	1958
	Am.	1954	342-502	Am.	1960
§ 1a	New	1958	342-504	Am.	1960
§ 2-a	New	1952	342-505a	New	1956
§ 2b	New	1960	342-507	Am.	1950
326k-13	New	1950	342-507	Am.	1960
326k-14	New	1952	342-606	Am.	1960
326k-14	Am.	1958	342-704	Am.	1958
326k-15	New	1952	342-707a	Am.	1950
326k-15	Am.	1958	342-902	Am.	1958
326k-16	New	1952	342-903	Am.	1958
326k-17	New	1952	342-903	Am.	1960
326k-17	Rep.	1958	548b	New	1956
326k-18			579-1 to 579-42	New	1956
to			579-1 to 579-42	Rep.	1958
326k-21	New	1952	580-1 to 580-39	New	1956
326k-21	Am.	1960	580-1 to 580-39	Rep.	1957
326k-22			581-1 to 581-39	New	1958
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326k-26	New	1954	581-35,		
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			M	Am.	1960

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582-1	New	1960
600a,		
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§ 3	Am.	1952
§ 5	Am.	1952
§ 24	Am.	1952
§ 30	Am.	1954
600a	Rep.	1956
601	New	1954
602	Am.	1954
603-605	Rep.	1958
613	Am.	1956
631-633	Rep.	1958
634	Am.	1956
(B)	New	1950
(C)	New	1952
634	Rep.	1958
634¼	Rep.	1958
634a	Rep.	1958
636-648	Rep.	1958
649	Am.	1956
649-652	Rep.	1958
653	Am.	1956
653-654	Rep.	1958
655	Am.	1956
656	Rep.	1956
659-664	Rep.	1958
664-2	New	1958
664-3	New	1958
666	Am.	1950
666	Am.	1958
666-1	Am.	1950
666-1	Rep.	1958
666-2	New	1950
666-2	Rep.	1958
666a-1	Rep.	1958
666a-2	New	1958
677	Rep.	1950
678	Am.	1952
678m	New	1956
678m-1	New	1958
678m-2	New	1958
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678m-3	New	1958
678m-4	New	1960
681	Am.	1950
684-687	Rep.	1960
688	Am.	1952
688a	New	1952
689	Am.	1952
689a-2	Am.	1952
689a-3	Rep.	1958
689a-4	Am.	1952
689a-4a	New	1952
689a-5	Am.	1952
689a-5	Am.	1958
689a-6	Am.	1952
689a-7	Am.	1958
689a-8a	New	1958
689a-9a	New	1954

Civ.St. Art.	Effect	Vernon's Texas St.Supp.
689a-17	Rep.	1958
689a-17a	New	1958
689a-18	Rep.	1958
689a-19a	New	1958
691	Am.	1952
692	Am.	1952
694	Am.	1950
695c,		
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§ 4(7)	Am.	1952
§ 7A	New	1954
§ 8	New	1950
§ 8(a)	Am.	1954
§ 15	Am.	1952
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to		
16-C	New	1958
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§ 29	Am.	1954
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695g	New	1952
§ 1	Am.	1954
§ 1	Am.	1956
§§ 2-12	Am.	1954
§ 3	Am.	1956
§ 4	Am.	1956
§ 7	Am.	1956
§ 13a	New	1954
695h	New	1956
§ 1(c)	Am.	1958
695i	New	1958
702	Am.	1954
703a	New	1956
703b	New	1958
708b-1	Am.	1950
709a	New	1954
717	Am.	1952
717f	New	1950
717g	New	1952
717h	New	1952
717i	New	1954
717j	New	1956
717k	New	1956
717l	New	1958
717m	New	1960
752a	Am.	1956
752y-4	New	1958
752y-5	New	1960
784a, § 4	Am.	1960
802g	New	1956
822	Rep.	1954
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835j	New	1950
835k	New	1950
835l	New	1952
835m	New	1954

**ARTICLES AFFECTED FROM 1949 TO 1959**

<b>Civ.St. Art.</b>	<b>Effect</b>	<b>Vernon's Texas St.Supp.</b>	<b>Civ.St. Art.</b>	<b>Effect</b>	<b>Vernon's Texas St.Supp.</b>
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836	Am.	1950	§ 1	Am.	1954
842b-842f	Rep.	1952	974-1	New	1950
842g	New	1952	974-2	New	1950
881a-8	Am.	1952	976a	New	1950
881a-9	Am.	1950	976b	New	1950
881a-9	Am.	1952	977	Am.	1950
881a-10	Am.	1950	999a	New	1950
881a-12	Am.	1952	1011	Am.	1950
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881a-24	Am.	1950	1011f	Am.	1954
881a-25	Am.	1950	1011g	Am.	1960
881a-37	Am.	1950	1011l	New	1958
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881a-57	Am.	1950	1015g,		
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881a-63	Am.	1950	§ 5	Am.	1956
881b	New	1950	§ 13	Am.	1956
911b,			§§ 13(a) to 13(c)	New	1956
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§ 1a(1) (e)	Am.	1958	1015i	New	1954
912a-2	Am.	1952	1015j	New	1956
912a-3	Am.	1952	1015k	New	1960
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932	Rep.	1956	1085a	Am.	1952
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969d	New	1954	1109h	New	1958
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973	Am.	1954	§ 5(d)	Am.	1960
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974c-3	New	1950	1111b	New	1950
974c-4	New	1950	§ 1	Am.	1952
974d-2	New	1950	1111c	New	1952
974d-3	New	1954	1112	Am.	1954
974d-4	New	1956	1113a	New	1950
974d-5	New	1956	1113a	Am.	1954
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974e-7	New	1950	1118n-6	New	1956
974e-8	New	1952			

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1118r	New	1952	§ 16	Am.	1952
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1118t	New	1954	§ 16a	New	1950
1118u	New	1954	§ 18	Am.	1956
1118v	New	1958	§ 20	Am.	1956
1118w	New	1958	§ 21	Am.	1956
1154	New	1950	§ 22	New	1950
1161	Am.	1954	§ 22a	New	1952
1170a	New	1952	§ 23	Am.	1952
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1174a—2	New	1954	§ 26	Am.	1956
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1174a—4	New	1960	§ 26(a)	New	1958
1182c—1	Am.	1950	§ 27(a)	Am.	1958
1182c—1	Am.	1958	§ 27(b)	Am.	1952
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1182c—6	New	1960	§ 3a	New	1954
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1187c	New	1950	§ 10	New	1958
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1188	Am.	1958	(38)	Am.	1954
1191	Am.	1958	(95)	Am.	1954
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1197a	New	1954	1302d—1	New	1956
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1200d	New	1956	1302h	New	1950
1266	Am.	1960	1302i	New	1954
1268a	New	1960	1314	Am.	1952
1269b—2	New	1960	1314a	New	1960
1269j—4	New	1952	1327	Am.	1952
1269j—5	New	1956	1327a	New	1950
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1269j—6	New	1956	1334b	New	1956
1269j—7	New	1958	1360	Am.	1960
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1269l—1	New	1950	1433	Am.	1950
1269l—2	New	1958	1433a	New	1950
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§ 9	Am.	1950	1513a	New	1958
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			§ 14	New	1960

ARTICLES AFFECTED FROM 1949 TO 1959

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§ 4(5)	Am.	1954	1934a—15(c)	Am.	1958
1529	Am.	1954	1934a—16	New	1960
1538h	Am.	1956	1969a—2	New	1952
1538n	New	1952	1969a—3	New	1956
1538n	Am.	1954	1970—31a	New	1952
1577	Am.	1950	1970—62a	New	1954
1577	Am.	1954	1970—110a	New	1950
1577a	New	1952	1970—110b	New	1952
1580 note	Am.	1950	1970—110c	New	1958
1580 note	Am.	1956	1970—114	Am.	1950
1580 note	Am.	1958	1970—115	Am.	1950
1580 note	Am.	1960	1970—122	Am.	1950
1581d	New	1950	1970—122	Am.	1952
1581e	New	1950	1970—122	Am.	1956
1605	Am.	1954	1970—138	Am.	1956
1605a—1	New	1958	1970—141.1	New	1956
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1606c	New	1952	1970—300a	New	1950
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1630b	New	1954	1970—301b	New	1952
1630c	New	1958	1970—301c	New	1954
1641	Am.	1956	1970—301d	New	1958
1641c	New	1958	1970—305,		
1641d	New	1960	§ 7	Am.	1956
1644a—1	New	1956	§ 7	Am.	1960
1645	Am.	1950	1970—305a	New	1952
1645	Am.	1956	1970—305b	New	1954
1645a—1	Am.	1950	1970—310 note	Am.	1958
1645a—5	Am.	1950	1970—310 note	Am.	1960
1645a—8	New	1952	1970—311a	New	1956
1645a—8	Am.	1954	1970—318a	New	1952
1646b	New	1950	1970—324	Am.	1950
1649	Am.	1956	1970—325	New	1950
1651	Am.	1960	1970—333a	New	1956
1659a	New	1960	1970—336	New	1950
1665	Am.	1956	1970—337	New	1950
1679	Am.	1960	1970—338	New	1950
1696a	New	1956	1970—338A	New	1960
1702a—1	Am.	1958	1970—339	New	1950
1702b—6	Rep.	1950	§ 5	Am.	1954
1702e	New	1950	§ 5	Am.	1956
1702f	New	1950	§ 8	Am.	1956
1702g	New	1950	§ 15	Am.	1956
1702h	New	1952	§ 17	Am.	1952
1702i	New	1954	§ 17	Am.	1956
1728	Am.	1954	1970—339A	New	1956
1817	Am.	1958	§ 8	Am.	1956
1817a	New	1958	§ 18	Am.	1956
1819	Am.	1958	1970—340	New	1950
1821	Am.	1954	1970—340.1	New	1958
1827	Am.	1958	1970—341	New	1952
1919	Am.	1952	1970—342	New	1954
			1970—343	New	1956

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1970-344	New	1958	2326n	New	1960
1970-345	New	1958	2327c	New	1950
§ 3	Am.	1960	2327d	New	1952
§ 11	Am.	1960	2327d	Am.	1956
§ 15a	New	1960	2328a, § 3	Am.	1954
1970-346	New	1960	2328b-1	New	1952
1970-347	New	1960	§ 2-A	New	1954
1970a-1	New	1958	2328b-2	New	1952
1995			2328b-3	New	1952
(9)	Am.	1954	§ 8	Am.	1954
(9a)	New	1954	§ 11	Am.	1954
(17a)	New	1956	§ 12	Am.	1954
2031b	New	1960	2329	Rep.	1950
2039a	Am.	1950	2338-1	Am.	1950
§ 1	Am.	1954	§ 4	Am.	1952
§ 1	Am.	1960	§ 4	Am.	1954
§ 2	Am.	1954	§ 13-B	New	1960
§ 4	Am.	1954	2338-2	New	1950
2039c	Am.	1950	§ 1	Am.	1960
2075	Am.	1956	2338-2a	New	1958
2093e	New	1950	2338-3	New	1950
2094	Am.	1950	§§ 2-4	Am.	1952
2094	Am.	1958	§§ 6-9	Am.	1952
2095	Am.	1950	§§ 12-14	Am.	1952
2095	Am.	1960	2338-3a	New	1958
2096	Am.	1960	2338-4	New	1952
2097	Am.	1960	2338-5	New	1954
2099	Am.	1960	2338-6	New	1954
2122	Am.	1954	2338-7	New	1956
2133	Am.	1957	2338-7a	New	1958
2135	Am.	1956	2338-8	New	1958
(4)	Am.	1954	§ 2	Am.	1958
(17)	New	1958	§ 6	Am.	1958
2168a	Am.	1950	§ 9	Am.	1958
2226	Am.	1950	2338-9	New	1958
2226	Am.	1954	§ 21	New	1960
2268a	New	1950	§ 22	New	1960
2320b, § 4	Rep.	1952	2338-9a	New	1960
2320c	New	1950	2338-10	New	1960
2323a	New	1952	2338-11	New	1960
2324	Am.	1956	§ 16-A	New	1960
2325	Rep.	1956	2338-12	New	1960
2326	Am.	1950	2338-13	New	1960
2326	Am.	1954	2350,		
2326a	Am.	1958	§ 2a	New	1950
2326i	New	1950	§ 2b	New	1952
2326j	New	1950	2350(6)	Am.	1950
2326j	Am.	1958	2350(6)	Am.	1954
2326j-1	New	1958	2350m,		
2326j-1	Am.	1958	§ 3a	New	1956
2326j-2	New	1958	§ 3b	New	1956
2326j-3	New	1960	2350n	New	1952
2326j-4	New	1960	2350n	Rep.	1960
2326j-5	New	1960	2350o	New	1960
2326j-6	New	1960	2351	Am.	1950
2326j-7	New	1960	2351a-4	New	1950
2326k	New	1952	2351a-5	New	1952
2326k combined with 2326		1954	2351a-6	New	1958
2326l	New	1958	§ 12	Am.	1960
2326m	New	1960	2351d	New	1950

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2351e	New	1950	2484	Am.	1954
2351f	New	1952	2484b	New	1950
2351g	New	1956	2529	Am.	1956
2351h	New	1958	2530a	New	1954
2352d	Am.	1956	2543c	Am.	1952
§ 1	Am.	1952	2553	Am.	1950
2367a	New	1960	2558a, § 4a	Am.	1960
§ 2	Am.	1960	2570-2583	Rep.	1956
2368a,			2583a	New	1952
§ 2	Am.	1950	2583a	Rep.	1956
§ 2a	New	1954	2589d	New	1954
§ 2b	New	1954	2589e	New	1954
§§ 5, 6	Am.	1952	2589f	New	1960
2368a-1	New	1950	2592a	New	1950
2368a-2	New	1954	2597	Am.	1950
2368a-3	New	1954	2603a,		
2368a-4	New	1956	§ 4	Am.	1958
2368a-5	New	1958	§ 5	Am.	1958
2368a-6	New	1960	§ 8	Am.	1956
2368f	New	1950	2603f-1	New	1960
2370a	New	1950	2603g	New	1954
2370a	Expired	1952	2603h	New	1958
2370b	New	1958	2603i	New	1960
2371	Am.	1952	2605	Rep.	1952
2372a-1	New	1954	2606b	New	1950
2372d-2	New	1950	2606c	New	1960
§ 1	Am.	1960	2613	Am.	1952
2372d-3	New	1952	2613a-3	Am.	1954
2372h, § 6	Am.	1950	§ 1	Am.	1958
2372h-1	New	1960	2613a-7	New	1956
2372h-2	New	1960	2613a-8	New	1958
2372i	New	1950	2613c	New	1956
2372j	New	1950	2614	Am.	1960
2372k	New	1952	2615b, § 4A	Rep.	1960
2372l	New	1954	2615d	New	1950
2372m	New	1956	2615d	Am.	1958
2372m	Am.	1956	2615e	New	1950
2372n	New	1956	2616a	New	1950
2372o	New	1960	2618	Am.	1954
2428	Am.	1956	2618	Am.	1960
2460a	New	1954	2620	Am.	1950
§ 5	Am.	1956	2620a	New	1950
§ 5a	New	1956	2621a	New	1960
2461	Am.	1950	2623c-1		
2462	Am.	1950	to		
2464	Am.	1950	2623c-7	New	1960
2465	Am.	1950	2624	Am.	1958
2465	Am.	1952	2624b	New	1958
2465	Am.	1954	2624c	New	1958
2465	Am.	1960	2628d	New	1956
2468	Am.	1950	2632d	New	1954
2469	Am.	1950	2632e	New	1958
2470	Am.	1950	§ 1	Am.	1958
2471	Am.	1950	2633a	New	1950
2477	Am.	1950	2637j	New	1952
2477	Am.	1954	2643b-1	New	1952
2481	Am.	1958	2643d	New	1950
2482	Am.	1958	§ 1	Am.	1956
2483	Am.	1954	2643e	New	1950
2484	Am.	1950	2643f	New	1952



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2643f—1	New	1956	2750a—2	New	1954
2643g	New	1954	2750a—2	Am.	1956
2643g	Am.	1956	2756c	New	1954
2647	Am.	1950	§ 2a	New	1958
2647c	Am.	1950	2757	Am.	1960
2647d—2647g	New	1950	2763	Am.	1952
2647h	New	1958	2766a	New	1956
2650	Rep.	1954	2767	Am.	1956
2651a	New	1950	2767—1	New	1956
2652	Rep.	1954	2773	Am.	1954
2654.1	New	1960	2774b	New	1952
2654a	Am.	1960	2774c	New	1954
2654b—1,			2774d	New	1958
§ 1	Am.	1960	2775a	New	1954
§ 5	New	1954	2775a—1	New	1956
2654c	Am.	1958	2775a—2	New	1960
2654c(6)	Am.	1954	2775b	New	1960
2654d—1	New	1950	2775c	New	1960
2654d—1	Am.	1958	2777d	Am.	1950
2654f	New	1950	§ 4a	New	1960
2654—1 to 2654—7	New	1950	2777d—1	New	1960
2654—1,			2779b	New	1954
§ 4	New	1952	§ 1	Am.	1956
§ 4a	New	1954	2783c,		
2654—1a	New	1960	§ 1	Am.	1952
2654—1b	New	1960	§ 2	Am.	1952
2654—3a	New	1952	§§ 4—6	Am.	1952
§ 1	Am.	1953	§ 8	Am.	1952
2663b—2	New	1956	2783d,		
2671	Am.	1956	§ 5	Am.	1954
2673	Am.	1956	§ 6	Am.	1950
2673a—2673i	New	1950	2783e	New	1950
2675—1 note	New	1950	2783f	New	1954
2675c—1	New	1956	2784e—1	New	1956
2675c—1	Rep.	1960	2784e—1	Am.	1958
2675c—2	New	1960	2784e—2	New	1960
2676	Am.	1958	2784e—3	New	1960
2688c	New	1950	2784e—4	New	1960
2688c	Am.	1954	2784f	New	1950
2688c	Am.	1958	2784g	New	1954
§ 2	Am.	1952	§ 4	Rep.	1960
2696	Am.	1954	2785	Am.	1954
2698	Am.	1954	2786	Am.	1958
2700	Am.	1950	2786c	New	1952
2701	Am.	1954	2786d	New	1954
2741a	New	1960	2786d	Am.	1958
2742o	New	1950	2786e	New	1954
2744a—1	New	1950	2786f	New	1954
2744e—4,			2788a	New	1950
§ 5	Am.	1952	§ 1	Am.	1958
§ 7	Am.	1952	2789	Am.	1950
2744e—5	New	1950	2789d	New	1952
2744e—6	New	1950	2789e	New	1958
2745b	New	1950	2790a—6	New	1950
2745b	Am.	1960	2790d—8	New	1950
2745c	New	1958	2790d—9	New	1960
2745c	Am.	1960	2790e, § 11	Am.	1956
2746	Am.	1950	2790l	New	1950
2746a	Am.	1958	2790m	New	1950
2746c	New	1960	2790n	New	1960

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2802-1	New	1956	2815r, §§ 3, 4	Am.	1952
2802e-1	Am.	1950	2815r-1	New	1956
2802e-1	Am.	1952	§ 5a	New	1958
2802e-1	Am.	1956	§ 6a	New	1958
2802f-3	New	1954	2815s-1	New	1956
2802i-28	New	1950	2815t	New	1952
2802i-29	New	1952	2815t-1	New	1960
2802i-30	New	1958	2816	Am.	1954
2802i-31	New	1960	2816a	Am.	1954
2802j	New	1952	2817	Am.	1954
2803c	New	1950	2817a	Am.	1954
2803d	New	1960	2819	Am.	1954
2804a	New	1954	2820	Am.	1954
2805a	New	1950	2821	Am.	1950
2806d	New	1950	2821	Am.	1954
2806d-1	New	1960	2822a	Am.	1954
2806e	New	1950	2827b	New	1960
2806e	Am.	1956	2832	Am.	1960
2815-2	New	1950	2833	Am.	1956
2815-2	Rep.	1952	2835c	New	1954
2815g-1a	Am.	1952	2843	Am.	1950
2815g-1b	New	1958	2843	Am.	1960
2815g-39			2844	Rep.	1950
to			2844a	Rep.	1950
2815g-43	New	1950	2851	Am.	1954
2815g-44			2859	Rep.	1954
to			2874	Am.	1954
2815g-46	New	1952	2875	Am.	1956
2815g-47	New	1954	2875	Am.	1958
2815g-48	New	1956	2876c	Am.	1954
2815g-49	New	1956	2876k	New	1958
2815g-50	New	1956	2876k	Am.	1960
2815g-51	New	1958	2877	Am.	1954
2815g-52	New	1960	2880a	Rep.	1956
2815h,			2882	Rep.	1956
§ 7a(1)	New	1952	2883	Rep.	1956
§ 7b	Am.	1950	2890	Rep.	1956
§ 17	Am.	1958	2891	Rep.	1956
§ 17	Am.	1960	2891b	New	1956
§ 17(a)	Am.	1950	2898-1	Rep.	1952
§ 17(a)	Am.	1958	2900a	New	1958
§ 18	Am.	1960	2901a	New	1958
§ 19	Am.	1960	2906	Am.	1958
§ 21	Am.	1960	2906-1	New	1958
2815h-6	New	1950	2906-2	New	1958
2815h-7	New	1952	2906-3	New	1958
2815h-8	New	1958	2908b	New	1950
2815h-9	New	1960	§§ 2, 3	Am.	1952
2815j-2	New	1950	2909b	New	1956
2815k,			2909c	New	1956
§ 6	Am.	1950	§ 8(a)	New	1960
§ 8(1)	New	1950	2909d	New	1958
2815k-1	Am.	1952	2911	Am.	1956
2815k-2	New	1960	2919c	New	1950
2815m-1	New	1950	2919d	New	1952
2815n	New	1950	§ 2	Am.	1960
§ 2a	New	1958	§ 5a	New	1956
2815o-2815s	New	1950	2919e	New	1954
2815o-1	New	1952	2919e-1	New	1956
2815o-1a	New	1960			

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2919e—2	New	1956	2956a	New	1950
§ 18	New	1960	2956a	Rep.	1952
2919f	New	1956	2957—2977	Rep.	1952
2919g	New	1958	2977a	Inoperative	1950
2919h	New	1960	2978	Rep.	1952
2922a	New	1950	2978a	Am.	1950
2922f	Am.	1950	2978a	Rep.	1952
2922f	Am.	1958	2978b	New	1950
2922l			2978b	Rep.	1952
(3)	New	1950	2980	Am.	1950
(4)	New	1950	2980—2997c	Rep.	1952
(5)	New	1952	2997d	New	1950
(6)	New	1952	2997d	Rep.	1952
(6), § 1	Am.	1956	2998—3007	Rep.	1958
(7)	New	1956	3008	Am.	1950
(8)	New	1956	3008—3011	Rep.	1952
(8)	Am.	1958	3012	Am.	1950
2922—1	Am.	1950	3012—3026	Rep.	1952
2922—1	Am.	1956	3026a	Am.	1950
§ 1(19)	Am.	1952	3026a	Am.	1952
§ 4(5)	Am.	1958	3027	Rep.	1952
§ 5	Am.	1952	3028	Am.	1950
§ 5(1)	Am.	1954	3028	Rep.	1952
§ 5(2)	Am.	1954	3029—3040	Rep.	1952
§ 5(4)	Am.	1954	3040a	New	1950
§ 5(7)	Am.	1954	3040a—3083	Rep.	1952
§ 6(2b)	Am.	1960	3084	Am.	1950
§ 8	Am.	1954	3084—3105	Rep.	1952
§ 10(5b)	Am.	1960	3106	Am.	1950
2922—1a	New	1954	3106—3108	Rep.	1952
2922—1b	New	1960	3109	Am.	1950
2922—1c	New	1960	3109—3116f	Rep.	1952
2922—2 to 2922—8	Rep.	1952	3116g	New	1952
2922—11			3117—3121	Rep.	1952
to			3122—3124	Am.	1950
2922—22	New	1950	3122—3127	Rep.	1952
2922—13,			3128	Am.	1950
§ 1(4)	Am.	1952	3128—3153	Rep.	1952
§ 1(4)	Am.	1954	3153a	New	1950
§ 1(4) a	Am.	1958	3153a—3154	Rep.	1952
2922—13a	New	1960	3154(a)	New	1952
2922—14	Am.	1958	3155—3158	Rep.	1952
§ 1-a	New	1956	3158a	New	1952
§ 1-b	New	1956	3158a	Am.	1960
§ 1-c	New	1956	3159—3173	Rep.	1952
2922—15,			3174a	New	1950
§ 1	Am.	1954	3174b	New	1950
§ 2	Am.	1952	§ 8	Am.	1960
§ 2	Am.	1958	3174b—1	New	1956
2922—16,			3174b—1	Rep.	1958
§ 2	Am.	1956	3174b—2	New	1956
§ 3	Am.	1954	3174b—3	New	1956
§ 4	Am.	1956	3174b—4	New	1958
§ 5	Am.	1956	3174c	New	1960
2922—16a	New	1958	3177	Am.	1952
2922—23	New	1952	3179a	New	1960
2922—24	New	1958	3183a	Am.	1950
2923—2942a	Rep.	1952	3183b—1	New	1960
2943	Am.	1952	3183c	New	1952
2944—2956	Rep.	1952	3183d	New	1954

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Civ.St.		St.Supp.		Civ.St.		St.Supp.	
Art.	Effect			Art.	Effect		
3183d	Rep.	1960		3726a	New	1958	
3183e	New	1956		3731a	New	1952	
3186	Rep.	1958		§ 7	Am.	1954	
3186a	Rep.	1958		3731b	New	1958	
3193	Rep.	1958		3731c	New	1960	
3193-1	New	1956		3737d	New	1950	
3193-1	Rep.	1958		3737d	Rep.	1956	
3194-3196	Rep.	1958		3737d-1	New	1956	
3196b	New	1950		§ 1	Am.	1960	
3196c	New	1952		3737e	New	1952	
3196c-1	New	1958		3867-3871	Rep.	1956	
3196d	New	1952		3871a	New	1956	
3196d	Rep.	1958		3871b	New	1956	
3201a	New	1954		3871c	New	1958	
3201b	New	1954		3872	Am.	1954	
3201b-1	New	1956		3875	Am.	1954	
3202-a	Am.	1954		3881a-3881d	New	1954	
3202-c	New	1950		3881e	New	1958	
3205a	New	1950		3883h	New	1956	
3206	Rep.	1954		3883i	New	1956	
3207a	Am.	1950		3883i	Am.	1958	
3207a	Am.	1958		§ 5	Am.	1960	
3207a, § 1	Am.	1958		§ 7a	New	1960	
3207b	New	1950		§ 8	Am.	1960	
3220-1	Rep.	1954		3886f	Am.	1950	
3222a	New	1958		§ 1	Am.	1956	
3223-3232	Rep.	1950		§ 3a	New	1956	
3232a	New	1950		3886g	New	1952	
3232a	Rep.	1958		3886h	New	1954	
3232b	New	1958		3886h	Am.	1958	
3233-3238	Rep.	1956		3886h	Am.	1960	
3238b	New	1952		3887b	New	1954	
3238b	Rep.	1960		3888	Am.	1952	
3238c	New	1956		3888	Am.	1954	
3238c	Rep.	1960		3888b	New	1954	
3239	Rep.	1960		3899b, § 3	Am.	1954	
3240-3246	Rep.	1960		3902f-1	New	1954	
3241	Am.	1954		3902h-2	New	1956	
3248-3251a	Rep.	1960		3902i	New	1950	
3252-3254	Rep.	1954		3902j	New	1952	
3254a	Rep.	1960		3902j	Am.	1958	
3254a-1	Am.	1950		3903e	New	1950	
3254a-1	Rep.	1960		3912e,			
3254c	Am.	1950		§ 1	Am.	1960	
3254c-1	New	1952		§ 3	Am.	1960	
3254d,				§ 13	Am.	1950	
§ 16	Am.	1950		§ 15	Am.	1950	
§ 17	New	1950		§ 17	Am.	1950	
3254d	Rep.	1960		§ 19(q)	Am.	1956	
3254d-1	New	1952		3912e-4b	New	1950	
3254d-1	Rep.	1960		3912e-4c	New	1952	
3255b	New	1952		3912e-4d	New	1954	
3263a	Rep.	1954		3912e-4d	Am.	1956	
3263c	New	1950		3912e-5a	New	1956	
3266(3)	Am.	1956		3912e-5a	Rep.	1958	
3266(3)	Am.	1960		3912e-5b	New	1956	
3290-3703	Rep.	1956		3912e-5c	New	1958	
3582a	New	1952					
3597a	New	1950					

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3912e—14 to			4331, § 8	Rep.	1952
3912e—16	New	1950	4335	Am.	1952
3912f—4	New	1950	4336	Am.	1952
3912g	New	1950	4341a	New	1952
3912h	New	1950	4344b	New	1960
3912i	New	1958	4346	Am.	1954
3918	Am.	1956	4346a	New	1960
3920	Rep.	1952	4348a	New	1960
3921	Am.	1952	4353	Am.	1952
3921a	New	1952	4357	Am.	1954
3924	Am.	1950	4357	Am.	1958
3927	Am.	1958	4357	Am.	1960
3927a	New	1958	4358	Am.	1954
3930	Am.	1958	4359	Am.	1954
3936g	New	1950	4365	Am.	1954
3936g—1	New	1952	4379b, § 3	Am.	1954
3936h	New	1950	4382	Am.	1954
3936h	Am.	1952	4382a	New	1954
3936i	New	1952	4386c	New	1954
3936j	New	1954	§ 1	Am.	1956
3936k	New	1954	4386d	New	1954
3937	Am.	1950	4393b	New	1954
3937	Am.	1952	4412a	New	1960
3939	Am.	1950	4413		
3939	Am.	1952	(4a)	New	1958
3943d	New	1952	(18a)	New	1958
3943e	New	1952	(29a)	New	1950
3945	Am.	1960	(29b)	New	1958
3959	Am.	1950	(31), § 1	Am.	1952
3959a	New	1950	(32)	New	1954
3972a	Inoperative	1952	(33)	New	1958
3975a	New	1958	4413b—1	New	1950
4000	Am.	1950	4417a	Am.	1960
4025a	New	1952	4418b	Am.	1958
4025b	New	1958	4418b—1	New	1956
4026b	New	1956	4436	Am.	1960
4032	Rep.	1952	4436a—1, § 1	Am.	1958
4032a	Rep.	1950	4436a—4	New	1960
4032b	New	1950	4437a,		
4032b—1	New	1958	§ 3	Am.	1952
4032c	New	1956	§ 6A(e)	Am.	1956
4050c	New	1950	4437c—1	New	1954
4050c—1	New	1958	4437e	New	1958
4050d	New	1952	4437f	New	1960
4075a	New	1950	4440	Rep.	1960
4075b	New	1960	4442	Rep.	1960
4102—4123a	Rep.	1956	4442b	Rep.	1954
4123a—1	Am.	1950	4442c	New	1954
4123a—1 to 4167	Rep.	1956	§ 2(a)	Am.	1960
4168	Am.	1950	4445,		
4168—4191	Rep.	1956	§ 3	Am.	1950
4192	Am.	1952	§ 4	Am.	1950
4192	Rep.	1958	4445a	New	1950
4192a	Rep.	1950	4447a	New	1950
4192b	New	1950	4447a	Am.	1960
4192b—4284	Rep.	1956	4447b	New	1960
4285	Am.	1954	4447c	New	1960
4285—4329	Rep.	1956	4473	Am.	1952

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4476—3,			4494p	New	1958
§ 3(a, b, c)	Am.	1958	4494q	New	1960
§ 8	Am.	1958	4494q—1	New	1960
§ 14a	New	1958	4494q—2	New	1960
4476—4	New	1960	4494q—3	New	1960
4476a,			4498a	New	1954
§ 1	Am.	1950	4499	Am.	1954
§ 2	Am.	1950	4499a	New	1954
§ 2	Am.	1956	4500	Am.	1954
§ 2	Am.	1960	4501	Am.	1952
§ 2(e)	Rep.	1958	4501	Am.	1954
§ 4	Am.	1950	4502	Am.	1954
§ 4(c)	Am.	1956	4504	Am.	1950
§ 5	Am.	1950	4506	Am.	1954
§ 5	Am.	1960	4507	Rep.	1954
§ 7	Am.	1956	4508	Rep.	1954
§ 9	Am.	1950	4509	Am.	1954
4477,			4510	Am.	1950
rule 3	Am.	1960	4510	Am.	1954
rule 4	Am.	1960	4512b	New	1950
rule 14	Am.	1960	§§ 4a, 4b	New	1958
rule 20	Am.	1960	§§ 8a, 8b	New	1958
rule 23	Am.	1960	§ 11	Am.	1958
rule 25	Am.	1960	§ 14	Am.	1958
rule 34a	Am.	1952	§ 14a	New	1958
rule 35a	Am.	1950	4518	Am.	1960
rule 36a	Am.	1952	4518a	Rep.	1960
rule 38a	Am.	1952	4526	Am.	1950
rule 39a	Am.	1952	4528b	New	1950
rule 39a	Am.	1958	4528c	New	1952
rule 40a	Am.	1952	§ 3a	New	1958
rule 43a	Am.	1952	§ 4(c)	Am.	1958
rule 47a	Am.	1952	§ 4½	Am.	1958
rule 47a	Am.	1958	§ 5	Am.	1958
rule 47b	New	1960	§ 8	Am.	1958
rule 51a	Am.	1952	§ 9	Am.	1956
rule 51a	Am.	1958	§ 9	Am.	1958
rule 51a	Am.	1960	§ 10	Am.	1958
rule 53a	Am.	1952	§ 13	Am.	1956
rule 54a	Am.	1950	4542a	Am.	1954
rule 54a	Am.	1952	§ 3	Am.	1960
rule 54a	Am.	1958	§ 4	Am.	1952
rules 77—86	Rep.	1952	§ 7	Am.	1958
4477a	New	1952	§ 8	Am.	1952
4477—1(c)	Am.	1952	§ 8	Am.	1960
4477—2	New	1950	§ 9	Am.	1952
§ 6A	New	1958	§ 9	Am.	1960
4477—11	New	1960	§ 11	Am.	1960
4478a	New	1954	§ 12	Am.	1958
4492	Am.	1954	§ 12	Am.	1960
4494h	Am.	1950	§ 13	Am.	1958
4494k	New	1950	§ 14	Am.	1952
4494l	New	1950	§ 14	Am.	1960
§ 4	Am.	1956	§ 16	Am.	1960
4494m	New	1950	§ 17	Am.	1952
4494n	New	1954	§ 17	Am.	1958
4494n	Am.	1956	§ 17	Am.	1960
§ 5a	New	1960	§ 19	Am.	1952
4494n—1	New	1960	§ 20	Am.	1958
4494o	New	1958	4542b	New	1958

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4549	Am.	1952	4602	Am.	1958
4551	Am.	1958	4605	Am.	1960
4551a	Am.	1952	4612a	New	1950
4551a	Am.	1954	4614	Am.	1958
(5)	New	1956	4616	Am.	1958
(6)	New	1960	4617	Am.	1958
(7)	New	1960	4619, § 6	New	1960
4551b	Am.	1952	4623	Am.	1958
4551b	Am.	1954	4624a	New	1950
4551b	Am.	1958	4629	Am.	1954
4551c	Am.	1954	4631	Am.	1958
4551d	New	1952	4632	Am.	1956
4551e	New	1952	4639a	Am.	1954
§ 1	Am.	1958	4639b	New	1956
§ 3	Am.	1958	4639c	New	1960
§ 10(g)	Am.	1958	4679-4698a	Rep.	1952
§ 10(h)	Am.	1958	4682b, § 1A	New	1950
§ 15	Am.	1958	4698b	New	1950
4551f	New	1960	4698b-4704	Rep.	1952
4551g	New	1960	4705	Am.	1950
4561	Am.	1952	4705-4724	Rep.	1952
4562	Am.	1952	4725	Am.	1950
4565	Am.	1952	4725-4764b	Rep.	1952
4565-a	Am.	1952	4764c	New	1950
4565d(1)	Am.	1958	4764c, 4765	Rep.	1952
4565g	Am.	1958	4766	Am.	1950
4567	Am.	1952	4766-4768	Rep.	1952
4569	Am.	1952	4769	Am.	1950
4570	Am.	1952	4769	Am.	1952
4571	Am.	1952	4769½	New	1952
4572	Rep.	1952	4769a	New	1952
4575	Am.	1952	4770 to 4860a-19	Rep.	1952
4576a-4581	Rep.	1954	4860a-20	Am.	1950
4582a	Rep.	1954	4860a-20 to 4928	Rep.	1952
4582b	New	1954	4929	Am.	1950
4584	Am.	1954	4929	Rep.	1952
4590-1	New	1960	4929a	New	1950
4590a	Rep.	1952	4929a to 4931	Rep.	1952
4590c	New	1950	4932	Am.	1950
§ 4	Am.	1956	4932-5012	Rep.	1952
§ 4	Am.	1960	5012a	Am.	1950
§ 5	Am.	1956	5012a-5068b	Rep.	1950
§ 5	Am.	1960	§ 7	Am.	1950
§ 7	Am.	1952	5068c, 5068d	Rep.	1952
§ 8	Am.	1956	5068e	New	1950
4590d	New	1950	5068e to 5068-7	Rep.	1952
§ 10	Am.	1954	5074a	New	1952
§ 11(1)	Am.	1952	5115	Am.	1958
§ 19a	New	1954	5118a	New	1956
4590e	New	1952	5139	Am.	1950
4591	Am.	1952	5139	Am.	1954
4591	Am.	1958	5139A	New	1952
4591d,			5139A	Am.	1958
§ 1a	New	1956	5139B	New	1952
§ 1b	New	1956	5139D	New	1950
§ 1c	New	1956	5139(E)	New	1950
§ 1c	Am.	1958	5139(E)	Am.	1952
4591e	New	1956	5139F	New	1952
4594	Am.	1956	5139F	Am.	1958
4597-4601	Rep.	1954	5139G	New	1952

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5139G	Am.	1956	5221b-2	Am.	1950
5139H	New	1952	5221b-2	Am.	1956
5139H-1	New	1956	5221b-3	Am.	1950
5139H-2	New	1956	5221b-3	Am.	1956
5139H-3	New	1958	(a, b)	Am.	1958
5139H-4	New	1960	5221b-4	Am.	1950
5139I	New	1954	5221b-4	Am.	1956
5139J to 5139O	New	1956	(b)	Am.	1958
5139J,			(h)	Am.	1958
§ 3	Am.	1960	5221b-5	Am.	1950
§ 3a	New	1960	5221b-5	Am.	1956
§ 3b	New	1960	(c)	Am.	1958
5139P-5139X	New	1958	(c) (7)	Am.	1954
5139Y	New	1960	(d)	Am.	1958
5139Z	New	1960	5221b-6	Am.	1950
5139AA to 5139FF	New	1960	(c)	Am.	1956
5142	Am.	1950	(c) (1)	Am.	1958
5142a,			5221b-7(c)	Am.	1958
§ 1	Am.	1950	5221b-8 (c)	Am.	1956
§§ 3-5	Am.	1950	5221b-8(f)	Rep.	1958
§ 6	Am.	1958	5221b-9		
5142a-1	New	1956	(a)	Am.	1956
5142a-2	New	1958	(c)	Am.	1956
5142b,			(g)	Am.	1958
§ 1	Am.	1950	(h)	Am.	1956
§ 1	Am.	1956	5221b-9b	Am.	1956
§ 5	Am.	1950	5221b-11	Am.	1950
§ 7	Am.	1950	5221b-12		
§ 15	Am.	1950	(a)	Am.	1956
§ 15	Am.	1956	(b)	Am.	1956
§ 17	Am.	1950	(d)	Am.	1956
5142c	New	1950	(e)	Am.	1958
§ 5	Am.	1956	(j)	Am.	1956
5142c-1	New	1950	5221b-13(a)	Am.	1956
5142c-2	New	1956	5221b-14		
5142d	New	1950	(a)	Am.	1956
5143c	New	1950	(a)	Am.	1958
§ 4	Am.	1956	(e)	Am.	1956
§ 5	Am.	1956	5221b-17	Am.	1950
5143d	New	1958	5221b-17	Am.	1956
5154g	New	1956	5221b-17	Am.	1958
5155	Am.	1958	5221b-18	Rep.	1958
5159c	New	1956	5221b-22a	Am.	1950
5160	Am.	1960	5221b-22aa	New	1958
5161-5164	Rep.	1960	5221c,		
5165a	New	1954	§ 1	Am.	1960
5172a, § 5	Am.	1954	§ 2	Am.	1960
5183	Am.	1960	§ 3	Am.	1956
5190½	New	1958	§ 3	Am.	1960
5190½	Am.	1960	§ 5	Am.	1952
5221a-4	Rep.	1950	§ 5	Am.	1958
5221a-5	New	1950	§ 12	Am.	1952
5221a-6	New	1950	§ 12	Am.	1958
5221b-1	Am.	1950	5221d	New	1956
5221b-1(b)	Am.	1956	5221e	New	1958
5221b-1(c)	Am.	1958	5248	Am.	1950
5221b-1(d)	Am.	1956	5248g	New	1950
5221b-1(d)	Am.	1958	§ 1	Am.	1956
5221b-1a	Rep.	1956	5248h, 5248i	New	1950



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5254a,			5421m		
§ 1	Am.	1958	§ 16	Am.	1956
§ 1	Am.	1960	§ 16(A)	New	1956
§ 2	Am.	1958	§ 17	Am.	1952
5282a	New	1956	§ 17	Am.	1956
5320a	New	1952	§ 17	Am.	1958
5326	Am.	1952	§ 18	Am.	1952
5326h	New	1950	§ 18	Am.	1956
5326i	New	1950	§ 19	Am.	1956
5326j	New	1952	§ 19	Am.	1958
5330a, § 2	Am.	1952	§ 19(A)	New	1956
5337-1	New	1958	§ 19(A)	Am.	1958
5337-2	New	1960	§ 21	Am.	1956
5366	Am.	1956	§ 21	Am.	1958
5368b	Rep.	1950	§ 21(A)	New	1956
5370	Am.	1950	§ 23	Am.	1952
5371	Am.	1958	§ 24	Am.	1956
5382a	Rep.	1954	§ 25	Am.	1956
5382b	New	1950	§ 30	New	1952
§ 7	Am.	1952	§ 31	New	1952
5382b-1	New	1954	§ 32	New	1956
5382c	New	1952	5421n	New	1954
5382d	New	1952	5421o	New	1956
§ 13a	New	1956	5429b	New	1950
5382d-1	New	1956	5429c	New	1950
5382e	New	1954	5429d	New	1952
5399a-5399f	Rep.	1954	5429e	New	1954
5414a-1	New	1956	5433a	New	1954
5415c	New	1958	5434	Am.	1954
5415d	New	1960	5438d	New	1956
5421b-1	New	1956	5441b	New	1960
5421c,			5452	Am.	1952
§ 8	Am.	1954	5472a	Am.	1960
§ 8	Am.	1958	5473	Am.	1958
5421c-7	New	1956	5476	Am.	1954
§§ 1-3	Am.	1958	5476	Am.	1958
§§ 7, 8	New	1958	5476a	New	1954
5421c-8	New	1958	5476a	Am.	1958
5421i	Am.	1952	5476b	New	1954
5421j-1	New	1958	5476b	Am.	1958
5421k-2	New	1958	5476c	New	1958
5421m	New	1950	5476d	New	1958
§ 2	Am.	1958	5499a	New	1954
§§ 2(A) to 2(C)	New	1958	5499a-51	New	1960
§ 3	Am.	1952	5500	Am.	1950
§ 3	Am.	1958	5506a	Am.	1954
§ 6	Am.	1958	5506c,		
§ 9	Am.	1952	§ 2	Am.	1956
§ 9(a)	Am.	1958	§ 7	Am.	1956
§ 10	Am.	1952	5517	Am.	1954
§ 10	Am.	1958	5526b	New	1960
§ 10(A)	New	1956	5541	Am.	1952
§ 11	Am.	1952	5547-1		
§ 11	Am.	1956	to		
§ 12	Am.	1958	5547-108	New	1958
§ 13	Am.	1958	5547-83	Am.	1960
§ 14	Am.	1952	5550-5554	Rep.	1958
§ 14	Am.	1954	5557-5561	Rep.	1958
§ 15	Am.	1956	5561a, §§ 1-5	Rep.	1958
§ 16	Am.	1952	5561b	New	1950

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5561b	Am.	1952	6050,		
5561b	Rep.	1958	§ 4	New	1956
5561b-1	New	1956	§ 4a	New	1956
5561b-1	Rep.	1958	6052a	New	1952
5561c	New	1954	6052a	Rep.	1960
§ 18	Am.	1958	6053,		
§ 18	Am.	1960	§§ 3-19	Rep.	1960
5577a	New	1954	§ 6	Am.	1950
5670-5674	Rep.	1952	§ 6(c)	New	1952
5692	Am.	1954	§ 7	Am.	1950
5766	Am.	1958	§ 7(c)	New	1952
5769b	New	1950	§ 8	Am.	1950
5769b	Rep.	1954	§ 10	Am.	1950
5769b-1	New	1954	§ 10(c)	New	1952
5769c	New	1950	§ 11	Am.	1950
5790a	New	1950	§ 11	Am.	1952
5798a-2,			§ 12	Am.	1952
§ 1	Am.	1950	§ 18	Am.	1952
§ 2	Am.	1952	6065	Am.	1960
§ 2	Am.	1960	6066	Am.	1960
5845	Am.	1950	6066b	New	1950
5845	Am.	1958	6066c	New	1954
5845a	New	1958	6066d	New	1960
5890a	Rep.	1954	6067a	New	1950
5890b,			6069b	New	1960
§ 1	Am.	1958	6070e	New	1950
§ 1	Am.	1960	6070f	New	1956
§ 5	New	1950	6074-6077a	Rep.	1950
5891	Rep.	1954	6077h-1	New	1952
5891c,			6077h-2	New	1954
§§ 1-4	Am.	1952	6077h-3	New	1960
§ 5(a)	New	1952	6077i	Rep.	1950
§ 5(b)	New	1952	6077o	New	1950
§ 7	Am.	1952	6077p	New	1950
5892	Am.	1954	6077q	New	1958
5893-5900	Rep.	1954	6077r	New	1958
5916	Rep.	1954	6079b	Am.	1956
5921a	Am.	1950	6079b	Am.	1958
5921b	New	1954	6079c	New	1950
5922a	New	1954	6079c	Am.	1952
5923a	New	1954	§ 3	Am.	1958
5923-1	New	1958	§ 12a	New	1958
5923-101	New	1958	6079c-1	New	1956
6003b	New	1960	6079d	New	1954
6008,			6079e	New	1958
§ 2(k)	Am.	1950	6079e	Am.	1960
§ 3	Am.	1950	6079f	New	1960
§ 7	Am.	1950	6081i	New	1952
§ 21	Rep.	1950	6110-6132	Rep.	1956
6008-1, § 5	Am.	1950	6132a	New	1956
6008a,			6142b	New	1956
§ 3(h)	Am.	1950	6144	New	1954
§ 3(i)	Am.	1950	6144e	New	1960
6008a-1	New	1950	6145	Rep.	1952
6008b	New	1950	6145	New	1958
§ 3	Rep.	1956	6145-2,		
6020a	Am.	1956	§ 6	Am.	1952
6029a	New	1956	§ 13	Am.	1959
			6145-3	New	1958
			6160a-1	New	1958

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6166d	Am.	1952	6243e,		
6166g note	New	1960	§ 7	Am.	1958
6166m	Am.	1952	§ 7A	New	1954
6166q	Rep.	1952	§ 7A	Am.	1958
6166y	Am.	1956	§§ 7B, 7C	New	1958
6166z1	Am.	1954	§ 9	Am.	1958
6184l	Am.	1950	§ 10	Am.	1958
6196	Rep.	1954	§ 10a	Am.	1956
6203c, § 9	Am.	1950	§ 10A	Am.	1958
6203c-1	New	1956	§ 10B	New	1958
6203d	Am.	1956	§ 10C	New	1960
6205	Am.	1952	§ 12	Am.	1956
6221	Am.	1950	§ 12	Am.	1958
6221	Am.	1954	§ 12A	New	1958
6221	Am.	1958	§ 21	Am.	1956
6227a	New	1950	§ 21	Am.	1958
6228a	Am.	1954	§ 23	Am.	1956
6228a	Am.	1958	§§ 23A, 23B	New	1958
§ 1	Am.	1950	§ 27A	New	1958
§ 1(P.R.)	Am.	1952	6243e-1	Rep.	1950
§ 3	Am.	1950	6243f,		
§ 3(E)	Am.	1952	§ 1	Am.	1952
§ 4(A)	Am.	1952	§ 1	Am.	1960
§ 5	Am.	1950	§ 2	Am.	1960
§ 5(A)	Am.	1956	§ 3	Rep.	1960
§ 5(B)	Am.	1952	§ 4	Am.	1960
§ 5(G)	Am.	1956	§ 5	Am.	1960
§ 5(I)	Am.	1952	§ 7	Am.	1952
§ 5(J)	New	1958	§ 7	Am.	1958
§ 6	Am.	1950	§ 7	Am.	1960
§ 7(F)	New	1960	§ 8	Am.	1952
§ 9a	New	1952	§ 8	Am.	1958
6228a-1	New	1954	§ 8	Am.	1960
6228a-2	New	1956	§ 9	Rep.	1960
6228a-2	Am.	1960	§ 10	Am.	1952
6228a-3	New	1958	§ 10	Am.	1960
6228b	New	1950	§ 11	Am.	1952
§ 4	Am.	1952	§ 11	Am.	1960
§ 8	Am.	1956	§ 12	Rep.	1960
§ 8a	New	1956	§ 13	Am.	1960
6228c	New	1950	§ 14	Am.	1960
6228c-1	New	1952	§ 15	Am.	1960
6228d	New	1950	§ 17	Am.	1956
6228d	Am.	1952	§ 17	Am.	1960
6228e	New	1960	§ 19	Am.	1960
6243a,			§ 23	Am.	1960
§ 1	Am.	1952	§ 24	New	1960
§ 6	Am.	1954	6243g	Am.	1958
§ 7	Am.	1954	§ 3(c)	Rep.	1960
§ 9	Am.	1954	§ 3A	Am.	1952
§ 10	Am.	1954	§ 3A(b)	Am.	1954
§ 11	Am.	1954	§ 3A(d)	New	1954
6243b, § 18	New	1960	§ 4(f)	New	1960
6243e,			§ 5(b)	Am.	1960
§ 3A	New	1958	§ 10	Am.	1960
§ 6	Am.	1950	§ 12	Am.	1952
§ 6	Am.	1954	§ 12	Am.	1954
§ 6	Am.	1958	§ 12	Am.	1960
§§ 6A, 6B	New	1958	§ 13	Am.	1954
§ 7	Am.	1954	§ 13	Am.	1960

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6243g,			6674n—2	New	1960
§ 13A	New	1952	6674q—5	Rep.	1952
§ 16	Am.	1952	6674s, § 7	Am.	1960
§ 16	Am.	1954	6674t	New	1952
§ 16	Am.	1960	6674t—1	New	1958
6243g—1	Am.	1956	6674u	New	1954
6243h	Am.	1950	6674v	New	1954
§ II(12)	Am.	1956	6674w to 6674w—5	New	1958
§ II(16)	Am.	1960	6675a—2	Am.	1954
§ II(25)	Am.	1960	6675a—2	Am.	1958
§ II(26)	Am.	1960	6675a—3	Am.	1956
§ IV	Am.	1956	6675a—3aa	Am.	1956
§ IV(1)	Am.	1960	6675a—5	Am.	1952
§ IV(2a)	Am.	1960	6675a—5	Am.	1958
§ V(1a)	Am.	1960	6675a—5a	New	1958
§ V(6)	Am.	1960	6675a—5b	New	1960
§ V(7)	Am.	1960	6675a—6	Am.	1958
§ VII	Am.	1960	6675a—6a	Am.	1958
§ XIII	New	1960	6675a—6b	New	1960
6243h—1	New	1950	6675a—7	Am.	1958
6243h—2	New	1952	6675a—8	Am.	1958
6243i	New	1950	6675a—8a	Am.	1956
6243i	Rep.	1952	6675a—8a	Am.	1958
6243j	New	1952	6675a—8a	Am.	1960
6252—2	New	1950	6675a—8b	Am.	1950
6252—3	New	1950	6675a—8b	Rep.	1956
6252—4	New	1952	6675a—8c	Am.	1958
6252—5 to 6252—6	New	1952	6675a—10	Am.	1958
6252—6,			6675a—11	Am.	1952
§ 4(c)	Am.	1954	6675a—12a	Am.	1952
§ 5(g)	Am.	1954	6675a—13	Am.	1952
6252—6a	New	1960	6687b,		
6252—7	New	1954	§ 3(4a)	New	1952
6252—8	New	1954	§ 4	Am.	1958
6252—9	New	1958	§ 4a	New	1958
6252—10	New	1960	§ 5	Am.	1954
6258	Am.	1954	§ 5a	New	1954
6268	Am.	1950	§ 15	Am.	1952
6478a	New	1960	§ 15	Am.	1956
6550a	Rep.	1954	§ 15	Am.	1958
6550(a)	New	1954	§ 15	Am.	1960
6550b	Rep.	1954	§ 15a	New	1954
6560—6573	Rep.	1954	§ 19	Am.	1952
6573a	Am.	1950	§ 19	Am.	1956
6573a	Am.	1956	§ 21	Am.	1960
§ 19	Am.	1960	§ 22	Am.	1960
6602(4)	Am.	1956	6687b note	Am.	1960
6626	Am.	1952	6701a,		
6626a	New	1958	§ 1	Am.	1954
6636	Am.	1956	§ 3	Am.	1950
6640	Am.	1960	6701c	Rep.	1956
6644	Am.	1954	6701c—1	New	1954
6673a	Am.	1954	§ 2	Am.	1956
6673c—1	New	1958	§ 4	Am.	1956
6673c—2	New	1958	§ 5	Am.	1956
6674m	Am.	1960	6701c—2	New	1954
6674n	Am.	1956			
6674n—1	New	1952			

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Civ.St. Art.	Effect	Vernon's Texas St.Supp.	Civ.St. Art.	Effect	Vernon's Texas St.Supp.
6701d,			6795b-1,		
§ 2	Am.	1954	§ 1	Am.	1956
§ 44	Am.	1954	§ 2	Am.	1950
§ 69	Am.	1952	§ 5a	New	1950
§ 93(a)	Am.	1960	§ 7	Am.	1950
§ 104	Am.	1954	§ 7(a)	New	1950
§ 104(a)	Am.	1956	§ 7(b)	New	1950
§ 104(d)	New	1958	6795c	New	1956
§ 105	Am.	1954	6812b	New	1952
§ 106	Am.	1950	6812c	New	1954
§ 106(a)	Am.	1956	6813 note	New	1960
§ 106(d)	New	1956	6819a	Rep.	1952
§ 108A	New	1956	6819a-3	Am.	1952
§ 108B	New	1956	6819a-4	Rep.	1950
§ 121	Am.	1960	6819a-5	New	1950
§ 125	Am.	1960	6819a-6	New	1950
§ 126	Am.	1956	6819a-6	Rep.	1952
§ 127	Am.	1956	6819a-6	Rep.	1958
§ 131	Am.	1954	6819a-7		
§ 131	Am.	1960	to		
§ 136	Am.	1952	6819a-9	New	1952
§ 139	New	1952	6819a-9	Rep.	1958
§ 139a	Am.	1960	6819a-9(a)	Rep.	1956
§ 140	Am.	1952	6819a-10	New	1956
§ 140	Am.	1954	6819a-10	Rep.	1958
§ 141	Am.	1952	6819a-11	New	1956
§ 141	Am.	1954	6819a-12		
§ 142	Am.	1952	to		
§ 142	Am.	1954	6819a-18	New	1958
§ 148	Am.	1954	6819a-12a	New	1960
§§ 158-165	New	1954	6819a-19		
6701d-1	New	1954	to		
6701d-2	New	1954	6819a-25	New	1960
6701e	New	1952	6820	Am.	1950
6701f	New	1952	6820	Am.	1956
6701g	New	1952	6822a	New	1960
§ 1	Am.	1954	6823	Am.	1950
§ 1	Am.	1956	6823	Am.	1954
§ 3	Am.	1954	6823a	New	1960
§ 3	Am.	1956	6824 note	New	1950
§ 4	Am.	1954	6839e	New	1950
§ 4	Am.	1956	6839f	New	1952
6701h	New	1952	6839g	New	1956
6701i	New	1958	6851a	New	1952
6701j	New	1958	6877-2	New	1954
6701½	New	1958	6889b	New	1950
6703a	New	1956	6889c	New	1952
6704	Am.	1954	6889d	New	1954
6711	Am.	1954	6889e	New	1956
6716-1,			6889-3	New	1952
§ 5	Am.	1958	6889-3A	New	1956
§ 6	Am.	1958	6889-4	New	1952
§ 15	Am.	1958	§ 5	Am.	1954
6745	Am.	1952	6889-5	New	1952
6762	Am.	1958	6899d	Superseded	1956
6795b, § 1	Am.	1960	6899d-1	New	1956
			6930	Am.	1954
			6935	Am.	1956
			6937	Am.	1956

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Civ.St. Art.	Effect	Vernon's Texas St.Supp.	Civ.St. Art.	Effect	Vernon's Texas St.Supp.
6954	Am.	1950	7047k,		
6954	Am.	1954	§ 1	Am.	1952
6954	Am.	1956	§ 3(c)	Am.	1952
6954	Am.	1958	§ 5a	Am.	1952
6954	Am.	1960	§ 6	Am.	1952
6965	Am.	1954	7047k-1	New	1950
6967	Am.	1954	§ 2	Am.	1952
7005-1	New	1958	7047l,		
7009	Am.	1956	§ 1	Am.	1952
7009a	New	1960	§ 1½	New	1950
7047			7047l-1	New	1956
(24)	Am.	1952	7047m,		
(40b)	Am.	1952	§ 1	Am.	1952
(41a)	New	1950	§ 1½	New	1950
(41a)	Am.	1952	7047n	New	1950
(46)	Am.	1952	7047o	New	1950
(46f)	Am.	1950	7048a	New	1950
7047a-2	Am.	1952	§ 10(a) (4)	Am.	1952
7047a-3	Am.	1950	7048b	New	1952
7047a-3	Am.	1952	7048b	Am.	1956
7047a-4	Am.	1952	7057	Rep.	1960
7047a-5	Rep.	1960	7057a,		
7047a-6			§ 2(1)	Am.	1952
to			§ 2A	New	1950
7047a-15	Am.	1952	7057e	New	1950
7047a-15a	New	1952	7057e	Rep.	1960
7047a-16	Am.	1952	7057f	New	1952
7047a-19	Am.	1954	7058	Rep.	1960
7047a-19	Am.	1958	7059	Rep.	1960
(1)	Am.	1960	7060	Am.	1952
7047a-19a	New	1954	7060½	New	1950
7047a-19a	Rep.	1958	7060a	Am.	1952
7047a-19b	New	1954	§ 1	Am.	1956
7047a-19b	Rep.	1958	7060b	New	1950
7047b,			7061	Rep.	1960
§ 1	Am.	1952	7062	Rep.	1960
§ 1(1)	Am.	1956	7063	Am.	1954
§ 1(3)	Am.	1954	7064	Am.	1952
§ 1(3)	Am.	1956	7064½	New	1950
§ 1½	New	1950	7064a	New	1950
§ 2(12)	Am.	1950	7064a	Am.	1952
§ 3-a	Rep.	1952	7064a-1	New	1950
7047c-1,			7065	Rep.	1960
§ 1(a)	Am.	1960	7065b-1	Am.	1952
§ 2	Am.	1950	(a)	Am.	1958
§ 2	Am.	1956	(c)	Am.	1958
§ 2(e)	Am.	1960	(g)	Am.	1958
§ 2a	New	1950	(n)	Am.	1958
§ 2½	New	1956	(q)	New	1958
§ 3	Am.	1950	7065b-2	Am.	1952
§ 3	Am.	1956	(a)	Am.	1956
§ 3	Am.	1960	(b)	Am.	1954
§ 3a	Am.	1960	(b)	Am.	1958
§ 30a	New	1950	7065b-3	Am.	1952
7047c-2	Rep.	1960	7065b-4	Rep.	1960
7047d, § 3	Am.	1954	7065b-5	Am.	1958
7047f	Rep.	1960	(a)	Am.	1956
7047h-7047j	Rep.	1960	7065b-6	Rep.	1960
			7065b-7(a)	Am.	1958
			7065b-8	Am.	1956

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7065b-9		
to		
7065b-12	Rep.	1960
7065b-13	Am.	1952
7065b-13	Am.	1954
7065b-14	Am.	1952
(a)	Am.	1956
(g)	Am.	1956
7065b-14a	New	1956
7065b-14b	New	1956
7065b-14c		
to		
7065b-17	Rep.	1960
7065b-18	Am.	1952
7065b-19		
to		
7065b-21	Rep.	1960
7065b-22	Am.	1952
7065b-23	Rep.	1960
7065b-24	Rep.	1960
7065b-25	Am.	1952
7065b-25	Am.	1960
7065b-26	Am.	1952
7065b-27	Am.	1952
7065b-28	Rep.	1960
7065b-29	Rep.	1960
7066	Rep.	1960
7066b(aa)	New	1956
7066b	Am.	1952
7066b-1	Rep.	1960
7066c	New	1950
7068	Rep.	1960
7069	Rep.	1960
7070	Am.	1952
7070a	New	1950
7071	Rep.	1960
7072	Rep.	1954
7076	Rep.	1960
7078	Rep.	1960
7080	Am.	1952
7081	Am.	1952
7082	Am.	1952
7083a, § 2	Am.	1958
(1)	Am.	1956
(1)	Am.	1960
(2)	Am.	1956
(2)	Am.	1960
(3)	Am.	1960
(4)	Am.	1956
(4)	Am.	1960
(4-a)	Am.	1950
(4-b)	New	1950
(4b)	Am.	1960
(4-c)	New	1956
(4c)	Am.	1960
(6)	Am.	1960
7084	Am.	1950
7084	Am.	1952
7084	Am.	1956
(2)	Am.	1958

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7084b	New	1960
7084½	New	1950
7084½	Rep.	1960
7085	Am.	1950
7085	Rep.	1960
7086	Am.	1950
(1)	Am.	1956
7087	Am.	1950
7087	Rep.	1960
7089	Am.	1950
(1)	Am.	1956
7089a-7089h	Rep.	1950
7090-7092	Am.	1950
7090	Rep.	1960
7091	Am.	1956
7092	Am.	1956
7092a	New	1950
7092a	Rep.	1960
7093	Am.	1950
7093	Rep.	1960
7094	Am.	1950
7094	Am.	1952
7094	Am.	1956
7094	Am.	1958
7094	Am.	1960
7095	Am.	1950
7095	Rep.	1960
7096	Am.	1952
7097	Am.	1950
7097	Rep.	1960
7105a	New	1956
7117-7121	Rep.	1960
7122	Am.	1956
7122	Am.	1960
7122-a	New	1958
7123-7139	Rep.	1960
7141	Rep.	1960
7143	Rep.	1960
7144	Rep.	1960
7144a	Rep.	1960
7150,		
20	New	1955
21	New	1960
7151	Am.	1952
7212	Am.	1950
7228-7241	Rep.	1952
7258a	Am.	1954
7264b	Rep.	1952
7298	Am.	1952
7298	Am.	1954
7298a	New	1958
7321a	Am.	1952
7331	Am.	1954
7332	Am.	1952
7333	Am.	1952
7335b	New	1952
7336f	Am.	1952
§ 2	Am.	1956
7345b	New	1952
§ 8	Am.	1954

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Civ.St. Art.	Effect	Vernon's Texas St.Supp.	Civ.St. Art.	Effect	Vernon's Texas St.Supp.
7345b—2	New	1956	7718	Am.	1960
7345e	New	1950	7718c	New	1954
7425c	New	1952	7718c	Rep.	1960
7425d	New	1956	7807n	New	1957
7428—1	New	1952	7880—1 notes	New	1958
7428—2	New	1952	7880—1 notes	New	1960
7430a	New	1958	7880—3c	New	1950
7448-7465	Rep.	1954	(A5)	Am.	1956
7465a	New	1954	(A6e)	New	1956
§ 8	Am.	1960	(A9)	Am.	1956
§ 13	Am.	1960	(B3)	Am.	1956
§ 14	Am.	1960	(B4)	Am.	1956
§ 16	Am.	1958	(B10)	New	1956
§ 16(b)	Am.	1960	(D4a)	Am.	1956
7466f	New	1950	(D5)	New	1956
7466g	New	1950	7880—16	Am.	1958
7466h	New	1952	7880—19	Am.	1958
7466i	New	1954	7880—20a	New	1956
7467b	New	1950	7880—23	Am.	1958
7467c	New	1954	7880—38a, § 1	Am.	1956
7470	Am.	1954	7880—43	Am.	1958
7470	Am.	1958	7880—74a	New	1952
7470a	Rep.	1954	7880—75c	New	1950
7470b	New	1954	7880—76	Am.	1958
7472d—1	New	1958	7880—76c,		
7472e	New	1956	§ 1	Am.	1952
7477	Am.	1954	§ 2	Am.	1952
7477a	New	1954	§ 7	Am.	1952
7478-7487	Rep.	1954	§ 8	Am.	1952
7488	Rep.	1954	§ 11	Am.	1952
7490	Rep.	1954	§ 17a	New	1952
7491	Rep.	1954	7880—90a	Am.	1952
7492	Am.	1954	7880—111(c)	New	1958
7492a	New	1954	7880—117	Am.	1958
7493	Am.	1954	7880—147c1	Am.	1958
7500a	Am.	1954	7880—147c6a	New	1958
7500a	Am.	1960	7880—147c8	New	1952
7512	Rep.	1954	7880—147c9	New	1956
7515	Am.	1954	7880—147c10	New	1958
7515a	New	1954	7880—147z1	New	1952
7519a	New	1954	7880—147z1	Rep.	1958
7519a	Am.	1958	7880—147z2	New	1956
7519b	New	1954	7880—147z3	New	1958
7519b	Am.	1958	7880—147z4	New	1958
7531	Am.	1954	7880—147z5	New	1958
7531a	New	1954	7880—147z6	New	1958
7537b	New	1957	7893a	New	1952
7550a	New	1957	7922	Am.	1956
7564	Rep.	1954	7930—4	Am.	1958
7569	Rep.	1954	7930—5	Am.	1956
7583	Am.	1950	7941b	New	1952
7589b	New	1958	7941c	New	1952
7612	Am.	1956	7987	Am.	1954
7612a	Am.	1956	7987	Am.	1958
7612b	New	1956	7987—1	New	1960
7621a	New	1954	8097 notes	New	1960
7622b—1	New	1958	8120	Am.	1956
7652b	New	1956	8120	Am.	1958
7656a	New	1960	8120a	New	1950
7661	Am.	1950	8152a	New	1952



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Civ.St. Art.	Effect	Vernon's Texas St.Supp.	Civ.St. Art.	Effect	Vernon's Texas St.Supp.
8161d	New	1950	8280-147,		
8176b	New	1956	§ 7(a)	New	1960
8176b-1	New	1958	§ 7-a	New	1960
8176b-2	New	1960	§ 7-b	New	1960
8176c	New	1958	§ 21(b)	New	1960
8176d	New	1960	8280-154	Am.	1958
8217a	New	1954	8280-157,		
8224	Am.	1958	§ 2	Am.	1960
8225	Am.	1952	§ 3	Am.	1958
8227a	New	1956	§ 3	Am.	1960
8235a,			§ 6(d)	Am.	1958
§ 3	Am.	1956	§ 6(f)	Am.	1958
§ 3	Am.	1958	§ 15(a)	Am.	1958
§ 4	Am.	1956	§ 15(a)	Am.	1960
§ 9	Am.	1956	§ 15(e)	Am.	1958
8244a	New	1956	§ 24-A	New	1960
8247b, § 1(b, c)	Am.	1958	§ 24-A	Am.	1960
§ 7a	New	1952	8280-160, § 13	Am.	1958
§ 18a	New	1952	8280-161,		
§ 18b	New	1952	§ 4	Rep. in part	1960
§ 18c	New	1952	§ 4-A	New	1960
8247e	New	1950	8280-162,		
8247e	Am.	1958	§ 1	Am.	1958
§ 2	Am.	1954	§ 5(l)	New	1960
§ 3	Am.	1954	§ 22	Rep.	1960
8247f	New	1956	8280-167,		
8263a, § 3a	New	1952	§ 2	Am.	1960
8263e,			§ 3-A	New	1958
§ 18-a	New	1950	§ 12(a)	New	1958
§ 78	Am.	1960	8280-172, § 4(a)	New	1958
§ 84	Am.	1960	8280-173, § 6	Am.	1960
8263f-1	New	1952	8280-174, § 3	Am.	1960
8263h, §§ 51, 52	New	1950	8280-187,		
8263i	Am.	1954	§ 1	Am.	1958
8263j	New	1950	§ 1	Am.	1960
8263k	New	1950	8280-188,		
8274	Am.	1952	§ 2a-1	New	1958
8274	Am.	1954	§ 5(f)	Am.	1960
8274	Am.	1956	§ 8(d)	Am.	1960
8274	Am.	1960	§ 8-A	New	1958
8280-2 to 8280-4	New	1950	8280-191		
8280-3.5	New	1960	to		
8280-5	New	1954	8280-209	New	1958
8280-6	New	1954	8280-206, § 2	Am.	1960
8280-7	New	1956	8280-210		
8280-8	New	1958	to		
8280-9	New	1958	8280-215	New	1958
§ 4	Am.	1960	8280-216	New	1960
§ 10-D	Am.	1960	8280-217	New	1960
8280-107, § 10	Am.	1960	§ 6	Am.	1960
8280-119,			8280-218		
§ 3(e)	Am.	1958	to		
§ 17-a	New	1960	8280-226	New	1960
8280-124, § 10(a)	New	1958	8280-227	New	1960
8280-126, § 8(e)	Am.	1958	§ 6	Rep. in part	1960
8280-128	Rep.	1960	§ 6-A	New	1960
8280-131	Am.	1960	8280-228		
8280-135, § 12	Am.	1958	to		
			8280-244	New	1960
			8293	Am.	1950

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830G,		
§ 6	Am.	1954
§ 7	Am.	1954
§ 7	Am.	1958
§ 7a	Am.	1954
§ 7b	Am.	1954
§ 7c	Am.	1958
§ 7d	Am.	1958
§ 7d	Am.	1960
§ 8	Am.	1958
§§ 10-12	Am.	1958
§ 12c-2	Am.	1958
§ 12f	Am.	1954
§ 15	Am.	1960
§ 15a	Am.	1952
§ 15a	Am.	1956
§ 20	Am.	1956
§ 25	Am.	1960
§ 26(d)	Am.	1958
§ 28	New	1958
8306a	Am.	1952
8306a	Am.	1956
8307,		
§ 4	Am.	1954
§ 5	New	1958
8308,		
§ 1A	New	1954
§ 16	Am.	1954
§ 18	Rep.	1954
8309,		
§ 1	Am.	1960
§ 1b	New	1958
§ 2	Am.	1954
8309a	Am.	1954
8309b,		
§ 2	Am.	1950
§ 2	Am.	1958
§ 3	Am.	1958
§ 4	Am.	1950
§ 7	Am.	1950
§ 7	Am.	1954
§ 7	Am.	1960
§ 10	Am.	1954
§ 13	Am.	1954
§ 14	Am.	1954
§ 14	Am.	1958
§ 15	Am.	1958
§ 18	Am.	1954
8390c	New	1950
§ 3	Am.	1956
§ 3	Am.	1958
§ 6	Am.	1954
§ 9	Am.	1954
§ 10	Am.	1956
§ 15	Am.	1954
§ 17	Am.	1956
8309d	New	1952
§ 7	Am.	1960

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8309e	New	1954
8309f	New	1958
8310-8324	Rep.	1954

BUSINESS CORPORATION ACT

Bus. Corp.Act Art.	Effect	Vernon's Texas St.Supp.
1.01 to 11.01	New	1956
2.18, § A	Am.	1958
2.19,		
§ A	Am.	1958
§§ E, F	New	1958
2.22,		
§ A	Am.	1958
§ C	Am.	1958
2.29, § D	Am.	1958
3.02, § A	Am.	1958
3.05, § A	Am.	1958
4.07,		
§ B	Am.	1958
§ C(2)	Am.	1958
5.09	Am.	1958
5.10	Am.	1958
5.11, § A	Am.	1958
8.01, § B	Am.	1958
8.14, § A	Am.	1958
9.14,		
§ A	Am.	1960
§ E	Am.	1960
§ F	New	1960
10.01, § A(13)	Am.	1958

ELECTION CODE

Elec. Code Art.	Effect	Vernon's Texas St.Supp.
1.01 to 14.12	New	1952
5.03	Am.	1957
5.05,		
Subds. 1-5	Am.	1960
Subd. 6	Am.	1958
Subds. 6-8	Am.	1960
Subds. 15-17	New	1960
5.06	Am.	1960
5.09	Am.	1960
5.11	Am.	1958
5.14	Am.	1960
6.01	Am.	1956
6.01	Am.	1960
6.05	Am.	1958
6.06	Am.	1958
6.07	Am.	1956
7.14	New	1956
§ 7a	New	1958
§ 7b	New	1960
§ 15	Am.	1958
§ 16a	New	1960

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Elec. Code Art.	Effect	Vernon's Texas St.Supp.	Ins. Code Art.	Effect	Vernon's Texas St.Supp.
8.13	Am.	1958	2.07,		
12.02	Am.	1958	§ 1	Am.	1958
13.01a	New	1960	§ 6	Am.	1956
13.03	Am.	1960	2.08	Am.	1956
13.04A	New	1956	2.08	Am.	1960
13.08	Am.	1956	2.10	Am.	1956
13.08	Am.	1960	2.10(3)	Am.	1960
13.08a	New	1958	2.14	Am.	1960
13.09	Am.	1958	2.18	Am.	1956
13.12	Am.	1960	2.20	New	1956
13.14	Am.	1960	2.21	New	1956
13.15	Am.	1956	3.02	Am.	1956
13.17	Am.	1960	3.02a	New	1956
13.24	Am.	1960	3.03	Rep.	1956
13.27	Am.	1960	3.04	Am.	1956
13.34	Am.	1958	3.04	Am.	1958
13.34	Am.	1960	§ 1(3)	Am.	1960
13.35	Am.	1960	3.06	Am.	1956
13.36	Am.	1960	3.11	Am.	1956
13.43a	New	1958	3.12	Am.	1958
13.45	Am.	1960	3.15	Am.	1958
13.46	Am.	1960	3.16	Am.	1958
13.47	Am.	1960	3.22	Am.	1956
13.58	Am.	1960	3.28	Am.	1960
14.08	Am.	1956	3.30	Am.	1956
			3.32	Am.	1956
			3.34	Am.	1954
			3.34	Am.	1960
			3.39,		

INSURANCE CODE

Ins. Code Art.	Effect	Vernon's Texas St.Supp.	Ins. Code Art.	Effect	Vernon's Texas St.Supp.
1.01 to 21.44	New	1952	(1)	Am.	1960
1.02	Am.	1956	(2)	Am.	1960
1.02	Am.	1958	(6)	Am.	1960
1.03	Am.	1956	(9)	Am.	1956
1.03	Am.	1958	(10)	New	1960
1.04	Am.	1956	3.40	Am.	1956
1.04	Am.	1958	3.40	Am.	1960
1.05-1.07	Am.	1958	3.42	Am.	1958
1.08	Am.	1956	3.43	Rep.	1958
1.08	Am.	1958	3.44(7)	Am.	1960
1.09	Am.	1958	3.49-1	New	1954
1.09-1 to 1.09-3	New	1958	3.49-2	New	1960
1.10(4)	Am.	1960	3.50	Am.	1958
1.10(5)	Am.	1956	§ 1(1) (d)	Am.	1956
1.10(17)	New	1960	§ 1(1) (d)	Am.	1960
1.14	Am.	1956	§ 1(3)	Am.	1954
§ 1	Am.	1960	§ 1(3)	Am.	1956
1.15	Am.	1956	§ 1(4)	Am.	1956
1.16	Am.	1956	§ 1(4)	Am.	1960
1.17	Am.	1956	3.60	Am.	1956
1.18	Am.	1956	3.62-1	New	1958
1.19	Am.	1956	3.69	New	1956
2.01	Am.	1956	3.70-1 to 3.70-10	New	1956
2.02	Am.	1956	4.01	Am.	1958
2.03	Am.	1956	5.01	Am.	1954
2.03-1	New	1956	5.04	Am.	1954
2.04	Am.	1956	5.05	Am.	1954
2.05	Am.	1956	5.09	Am.	1954
			5.11	Am.	1954
			5.13	Am.	1956
			5.26	Am.	1956

ARTICLES AFFECTED FROM 1949 TO 1959

Ins. Code Art.	Effect	Vernon's Texas St.Supp.	Ins. Code Art.	Effect	Vernon's Texas St.Supp.
5.50	Am.	1956	17.06	Am.	1954
5.54	Am.	1956	17.06	Am.	1956
5.55	Am.	1954	17.09	Am.	1956
5.58	Am.	1954	17.11	Am.	1954
5.60	Am.	1954	17.11	Am.	1956
5.65	Am.	1954	17.16	Am.	1954
5.76	New	1956	17.16	Am.	1956
5.76 to 5.79	New	1954	17.17	Am.	1954
6.01	Am.	1960	17.22	Am.	1956
6.02	Am.	1960	17.25,		
6.04-6.08	Am.	1956	§ 1	Am.	1956
6.12, § 6	Am.	1960	§ 4	Am.	1954
7.01-7.18	Rep.	1958	§ 5	Am.	1956
7.01	New	1960	§ 7	Am.	1954
7.19-1	New	1960	§ 7	Rep.	1956
8.05	Am.	1956	§ 9	Am.	1954
8.10	Am.	1956	§ 9	Am.	1956
8.14	Am.	1960	§ 20	Am.	1956
8.18	Am.	1956	§ 22	New	1954
9.01	Am.	1956	§ 22	Rep.	1956
9.01a	New	1958	18.04	Am.	1956
9.02	Am.	1956	18.05	Am.	1956
9.03	Am.	1956	18.07	Am.	1956
9.06	Am.	1956	18.09	Am.	1956
9.07	Am.	1956	18.11	Am.	1956
9.09	Am.	1958	18.23	Am.	1956
9.11	Am.	1956	19.02	Am.	1960
9.11	Am.	1960	19.03	Am.	1956
9.25	Am.	1956	19.06	Am.	1956
10.05	Am.	1960	19.10	Am.	1956
10.08	Am.	1956	19.10	Am.	1960
10.18	Am.	1960	19.11	Am.	1956
10.40, § 3	Am.	1956	19.12	Am.	1956
11.01	Am.	1956	20.10	Am.	1960
11.02	Am.	1954	20.12	Am.	1960
11.02	Am.	1956	20.16	Am.	1960
11.09	Am.	1960	20.19	Am.	1960
11.10	Am.	1954	21.07,		
11.10	Am.	1956	§ 2	Am.	1960
11.11	Am.	1956	§ 3	Am.	1960
11.12	Am.	1954	§ 6	Am.	1956
11.12	Am.	1956	§ 7	Am.	1960
11.17	Am.	1954	21.07-1	New	1956
11.17	Am.	1956	§ 8	Am.	1960
11.19	Am.	1956	§ 9	Am.	1960
14.17	Am.	1960	21.07-2	New	1956
14.61, § 1(c)	Am.	1956	21.11	Am.	1956
14.63	New	1956	21.14,		
15.04	Am.	1956	§ 8	Am.	1960
15.06	Am.	1956	§ 12	Am.	1960
15.08	Am.	1956	21.21	Am.	1958
15.11	Am.	1956	21.26	Am.	1960
16.01, § 2	Am.	1956	21.28	Am.	1956
16.06	Am.	1954	21.32	Am.	1960
16.06	Am.	1956	21.38,		
16.07	Am.	1954	§ 2	Am.	1958
16.11	Am.	1954	§§ 5-7	Am.	1958
17.02	Am.	1956	21.39	Am.	1956
17.03	Am.	1956	21.43	Am.	1960
17.05	Am.	1954			

**VERNON'S TEXAS STATUTES**

<b>Ins. Code Art.</b>	<b>Effect</b>	<b>Vernon's Texas St.Supp.</b>
21.44	New	1956
21.45	New	1956
21.46 to 21.48	New	1958

**TEXAS NON-PROFIT  
CORPORATION ACT**

<b>Non-Profit Corp.Act Art.</b>	<b>Effect</b>	<b>Vernon's Texas St.Supp.</b>
1.01 to 11.01	New	1960

**PROBATE CODE**

<b>Prob. Code Sec.</b>	<b>Effect</b>	<b>Vernon's Texas St.Supp.</b>
1-435	New	1956
3(aa)	Am.	1958
33	Am.	1958
72	Am.	1960
78(c)	Am.	1958
124	Am.	1958
137(d)	Am.	1958
144(d)	New	1958
145	Am.	1958
146	Am.	1958
157	Am.	1958
193	Am.	1958
194	Am.	1958
201	Am.	1958
202	Am.	1958
219	Rep.	1958
228	Am.	1958
241	Am.	1958
253	Am.	1958
348(a)	Am.	1960
367(c)7	Am.	1958
368(b)	Am.	1958
370	Am.	1958
390	Am.	1960
399	Am.	1958
400	Am.	1958
401	Am.	1958
407	Am.	1960

**TAXATION—GENERAL**

<b>Taxation— General Art.</b>	<b>Effect</b>	<b>Vernon's Texas St.Supp.</b>
1.01 to 24.01	New	1960

**PENAL CODE**

<b>P.C. Art.</b>	<b>Effect</b>	<b>Vernon's Texas St.Supp.</b>
34	Am.	1958
101a	Rep.	1952
105	Am.	1956
131c—1, § 26a	New	1950

<b>P.C. Art.</b>	<b>Effect</b>	<b>Vernon's Texas St.Supp.</b>
157a	New	1956
158	Am.	1958
159	Am.	1958
160—a	New	1950
160—b	New	1950
179-183	Rep.	1958
183—1	New	1958
183—2	New	1958
252	Rep.	1960
262-269	Rep.	1960
296	Am.	1954
301d	Am.	1950
353b	New	1950
353c	New	1958
427a	Rep.	1958
430a	Rep.	1950
432	Am.	1950
432	Am.	1952
438c	Am.	1952
438d	New	1952
474	Am.	1950
480	Am.	1952
483	Am.	1952
483	Am.	1958
489c	New	1950
§ 1	Am.	1958
519	Am.	1960
527	Am.	1956
527	Am.	1958
527a	Am.	1956
527b	Am.	1956
534	Am.	1950
534a	New	1950
534a	Am.	1954
535b	New	1950
§ 2	Am.	1956
535c	New	1950
§ 2	Am.	1956
535d	New	1950
§ 3	Am.	1956
567b	Am.	1952
§ 1a	New	1958
590a	Rep.	1952
602	Am.	1960
602-A	New	1960
614	Am.	1960
642a	New	1952
642b	New	1952
642c	New	1952
666—3a	Am.	1950
(7)	Am.	1960
666—8	Am.	1958
666—11		
to		
666—13	Am.	1950
666—15	Am.	1950
666—15	Am.	1952
(13)	Am.	1958
(17)	Am.	1956
666—15a1	Am.	1950

ARTICLES AFFECTED FROM 1949 TO 1959

P.C. Art.	Effect	Vernon's Texas St.Supp.	P.C. Art.	Effect	Vernon's Texas St.Supp.
666-17	Am.	1950	667-23	Am.	1952
(1)	Am.	1952	667-23	Am.	1956
(1)	Am.	1954	667-23 $\frac{1}{8}$	New	1960
(2)	Am.	1952	667-23 $\frac{1}{4}$	New	1950
(3) (g)	New	1956	667-23 $\frac{1}{4}$	Am.	1954
(14) (a)	Am.	1956	667-23 $\frac{1}{2}$	Am.	1954
(15)	Am.	1952	667-23a	New	1950
(22)	Am.	1954	667-24a	Am.	1950
666-21	Am.	1952	667-24 $\frac{1}{4}$	New	1952
666-21	Am.	1960	667-25	Am.	1954
666-21a	Am.	1950	667-28		
666-21a	Am.	1952	to		
666-21 $\frac{1}{4}$	New	1956	667-31	New	1950
666-21 $\frac{3}{8}$	New	1952	667-32	New	1954
666-21 $\frac{1}{2}$	New	1950	696a, § 1(a, b)	Am.	1958
666-23a(4)	Am.	1958	700b, § 2	Am.	1952
666-25b	New	1956	701b	Rep.	1954
666-27 $\frac{1}{2}$	New	1952	705b-1	Am.	1952
666-30	Am.	1950	705c, § 3a	New	1952
666-32	Am.	1954	705c	Rep.	1956
666-32	Am.	1956	705d	New	1956
666-33	Am.	1954	709	Am.	1952
666-36	Am.	1954	712	Am.	1956
666-36 $\frac{1}{2}$	New	1950	719e	New	1950
666-37	Am.	1954	725b	Am.	1956
666-39	Am.	1954	§ 1	Am.	1954
666-40	Am.	1954	§ 4	Rep.	1954
666-41a	Am.	1950	§ 5	Am.	1954
666-42	Am.	1950	§ 9	Am.	1954
666-44	Rep.	1950	§ 18a	New	1954
666-45(d)	Am.	1960	§ 23	Am.	1954
666-49a	New	1950	§ 23(2)	Am.	1958
666-50	New	1950	§ 24a	Rep.	1954
666-51a	New	1950	725c	New	1954
666-52	New	1950	§§ 3, 4	Am.	1956
666-52	Am.	1954	725d	New	1956
to			726	Rep.	1958
666-56	New	1950	726-1	New	1958
667-2a	New	1958	726-2	New	1958
667-3	Am.	1950	726b	New	1950
(a)	Am.	1960	§ 2	Am.	1956
(b)	Am.	1960	726b	Rep.	1960
(c)	Am.	1960	726c	New	1952
667-5	Am.	1950	§ 2(g)	Am.	1956
667-5	Am.	1954	§ 3(2) (b)	Am.	1956
667-5A	Rep.	1950	§ 3(2) (d)	Rep.	1956
667-6	Am.	1958	§ 6	Am.	1956
667-7	Am.	1954	§ 13	Am.	1956
667-9	Am.	1954	726c	Rep.	1960
667-10 $\frac{1}{2}$	Am.	1958	726d	New	1960
667-17	Am.	1950	734a,		
667-19	Am.	1950	§ 20	Am.	1952
667-19	Am.	1954	§ 20a	New	1952
667-19B	Am.	1950	§ 22-A	Am.	1958
667-19B	Am.	1954	§ 26	Am.	1952
667-19C	New	1952	734b	Am.	1954
667-19D	New	1954	735	Am.	1952
667-20	Am.	1950	740	Am.	1950
667-23	Am.	1950	741	Am.	1950
			741	Am.	1954

## VERNON'S TEXAS STATUTES

P.C. Art.	Effect	Vernon's Texas St.Supp.	P.C. Art.	Effect	Vernon's Texas St.Supp.
742—a to 742—c	New	1950	861b	New	1958
743	Am.	1954	872f	New	1950
744—a	New	1950	879f—6	New	1952
744—b	New	1950	879g—2a	Am.	1950
747	Am.	1954	879g—2a	Am.	1960
752c,			879g—4	New	1960
§ 4	Am.	1950	879h—1		
§ 4	Am.	1952	to		
753	Am.	1952	879h—5	New	1960
753	Am.	1954	880	Am.	1950
753	Am.	1958	880	Am.	1954
754	Am.	1954	880	Am.	1958
754a	Am.	1952	880a	New	1958
(2)	Am.	1954	880b	New	1958
(5)	New	1956	880c	New	1960
(6)	New	1960	882a	New	1954
(7)	New	1960	888	Am.	1958
754b	New	1950	893	Am.	1954
754b	Am.	1952	895a	New	1950
754c	New	1960	895b	New	1952
759—762a	Rep.	1954	§ 2	Am.	1954
778	Am.	1952	895c	New	1958
778a	Am.	1952	908	Am.	1954
779	Am.	1952	908	Am.	1956
782b	New	1960	908	Am.	1960
802	Am.	1954	912	Am.	1952
802a—1	New	1956	923b	Rep.	1958
802b	Am.	1952	923M—1	Am.	1950
802d	New	1952	923m	Am.	1958
802e	New	1958	§ 4	Am.	1960
821a	New	1960	924a	New	1956
827a,			934a,		
§ 2	Am.	1950	§ 3, subs. 5		
§ 3(a)	Am.	1954	(a, b)	Rep.	1960
§ 3(a)	Am.	1956	934b—1	Rep.	1950
§ 3(c)	Am.	1950	934b—2	New	1950
§ 3(c)	Am.	1954	934c	New	1952
§ 3(c)	Am.	1956	§ 5	Am.	1960
§ 5	Am.	1952	941b	New	1950
§ 5	Am.	1960	941—2	New	1960
§ 5c	New	1958	§ 1	Am.	1960
§ 5½	New	1952	952aa—4	New	1960
§ 5½	Am.	1960	952L—7	Am.	1950
§ 6	Am.	1952	952L—11,		
§ 6	Am.	1954	§ 1(3)	Rep.	1960
§ 8	Am.	1952	§ 1(5)	Rep.	1960
§ 8	Am.	1956	§ 1c	New	1950
827a—1	New	1952	§ 1c	Am.	1958
827a—1	Rep.	1960	978f—3	New	1952
827a—2	New	1954	978f—4	New	1954
827a—2	Am.	1956	978f—5	New	1956
827a—3	New	1956	978f—6	New	1960
827a—4	New	1960	978h, § 2	Am.	1956
827b,			978k, § 11a	New	1958
§ 2A	New	1950	978k—1	New	1958
§ 2A	Am.	1954	978L—2,		
§ 2A	Am.	1958	§§ 16, 17	Rep.	1960
§ 3	Am.	1958	§ 19	Am.	1960
827e—1	New	1958	978L—5	New	1950
834	Rep.	1960	§ 4	Am.	1952

ARTICLES AFFECTED FROM 1949 TO 1959

P.C. Art.	Effect	Vernon's Texas St.Supp.	P.C. Art.	Effect	Vernon's Texas St.Supp.
978l-6	New	1950	1436c	New	1952
978n-1	New	1950	1436d	New	1954
§ 1	Am.	1960	1436e	New	1960
§ 7	Am.	1960	1456a	New	1956
978o	New	1954	1477	Am.	1952
1042b, § 3	Am.	1954	1489	Am.	1954
1083a	Am.	1952	1492	Am.	1954
1083a	Rep.*	1956	1493	Am.	1954
1106(b)	Am.	1956	1505a	New	1960
(c)	New	1952	1525b,		
1111a	Rep.	1960	§ 22	Am.	1960
1111d,			§ 22a	New	1954
§ 2	Am.	1952	§ 22a	Am.	1960
§ 4	Am.	1952	§ 22b	New	1954
§ 5	Am.	1952	§ 23A	New	1960
§ 5½	New	1950	1525b-1	New	1960
§ 7a	New	1954	1525b-2	New	1960
1111d	Rep.	1960	1526-1532	Rep.	1954
1111m	New	1956	1538	Am.	1960
1112a	Rep.	1954	1545	Am.	1960
1137m	New	1956	1554a	New	1960
1137m	Rep.	1960	1555b	New	1960
1137n	New	1960	1583(6)	Rep.	1956
1146a	New	1950	1583	Rep.	1960
1147	Am.	1950	1583-1,		
1147	Am.	1956	§ 3a	New	1952
1148	Am.	1950	§ 6	Am.	1956
1260a	New	1950	§ 6	Am.	1960
1321a	New	1952	§ 6A	New	1960
1321b	New	1952	§ 6B	New	1960
1333A	New	1950	§ 7	Am.	1952
1341	Am.	1960	1583-2	Am.	1950
1344-1346	Rep.	1952	§ 1	Am.	1952
1350	Am.	1952	§ 1	Am.	1954
subd. 1	Am.	1958	§ 1-a	Rep.	1952
1351a, § 1-b	New	1954	1593a	Rep.	1950
1370	Am.	1950	1648a	New	1958
1370a	Am.	1960	1690b(d)	Am.	1956
1377	Am.	1950	(j)	Am.	1956
1377	Rep.	1960	(k)	Am.	1956
1377b	New	1960	1693	Am.	1954
1378a, §§ 11-13	Am.	1952	1700	New	1954
1379	Am.	1954	1712	Am.	1950
1398	Am.	1952	1716(1)	Am.	1952
1402a	New	1956	1721	New	1950
1404b	New	1952	1721A	New	1956
1404b	Am.	1956	1722	New	1952
1435a	New	1958	1722a	New	1960
1436-1,			§ 4(f)	Am.	1960
§ 1	Am.	1960	1723	New	1952
§ 2b	New	1960	1724	New	1958
§ 2c	New	1960	1725	New	1958
§§ 7-9	Am.	1952			
§ 30(a)	New	1956			
§ 49(e)	Am.	1960			
§ 57	Am.	1952			
§ 57	Am.	1956			
§ 57a	New	1956			

\*Art. 1083a was transferred to Civil Statutes art. 600, § 30, in 1954.



VERNON'S TEXAS STATUTES

CODE OF CRIMINAL PROCEDURE

C.C.P. Art.	Effect	Vernon's Texas St.Supp.	C.C.P. Art.	Effect	Vernon's Texas St.Supp.
10a	Am.	1960	601-a	Am.	1950
12	Am.	1960	601-A	Am.	1958
52-1 note	Am.	1952	623	Am.	1956
52-8 note	New	1952	658	Am.	1954
52-24b	New	1956	659	Am.	1954
52-24c	New	1956	662	Rep.	1954
52-61a	New	1958	663	Rep.	1954
52-158a	New	1952	667	Am.	1954
52-158b	New	1960	670	Am.	1956
52-159a	New	1952	678	Am.	1954
52-159b	New	1956	727a	Am.	1954
§ 13-A	New	1960	732a	New	1952
52-160a, § 5	New	1956	755	Am.	1952
52-160b	New	1950	759a	New	1952
52-161, § 15a	New	1954	§ 1(D)	Am.	1954
177	Am.	1960	§ 2	Am.	1954
271c	New	1958	§ 2	Am.	1956
§ 4	Am.	1958	§ 3	Rep.	1956
§ 6	Am.	1958	§ 4	Am.	1960
275a	New	1958	§ 5	Am.	1960
277, § 2	New	1952	760d	New	1952
332a	New	1954	760d	Am.	1960
333	Am.	1952	760e	New	1952
338	Am.	1952	768	Am.	1958
338b	New	1952	775a	Rep.	1958
348	Am.	1952	781b	Rep.	1958
367f	New	1950	§ 17	Rep.	1954
367g	New	1950	781b-1	New	1956
367h	New	1952	781b-2	New	1956
367i	New	1956	781c	New	1952
367j	New	1958	781d	New	1958
367k	New	1960	§ 6	Am.	1960
408a	New	1960	802	Am.	1952
486a	New	1952	807	Am.	1957
494	Am.	1958	809	Am.	1950
494	Am.	1960	921-932	Rep.	1958
494a	New	1952	932-1	New	1958
494a	Am.	1960	932-2	New	1958
§ 1A	Rep.	1960	932a	Rep.	1958
494b	New	1952	932b	New	1958
501	Am.	1960	959-966	Rep.	1958
502	Am.	1960	970b	New	1954
505	Am.	1960	989a	New	1956
517	Am.	1960	1008a	New	1952
518	Am.	1960	1038	Am.	1954
519	Am.	1960	1052	Am.	1950
563	Am.	1954	1052	Am.	1954
564	Am.	1954	1056	Am.	1954
582	Am.	1960	1056	Am.	1956
591	Am.	1956	1058	Am.	1952
591	Am.	1958	1061	Am.	1956
597	Am.	1952	1068	Am.	1956
597	Am.	1958	1070	Am.	1956
			1074	Am.	1954

# JUDGES AND OFFICERS

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## SUPREME COURT

J. E. HICKMAN, CHIEF JUSTICE

MEADE F. GRIFFIN, ASSOCIATE JUSTICE      RUEL C. WALKER, ASSOCIATE JUSTICE  
ROBERT W. CALVERT, ASSOCIATE JUSTICE      JAMES R. NORVELL, ASSOCIATE JUSTICE  
CLYDE E. SMITH, ASSOCIATE JUSTICE      JOE R. GREENHILL, ASSOCIATE JUSTICE  
FRANK P. CULVER, Jr., ASSOCIATE JUSTICE      ROBERT W. HAMILTON, ASSOCIATE JUSTICE  
GEORGE H. TEMPLIN, CLERK  
CARL B. LYDA, CHIEF DEPUTY CLERK

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## COURT OF CRIMINAL APPEALS

W. A. MORRISON, PRESIDING JUDGE

KENNETH K. WOODLEY, JUDGE      LLOYD W. DAVIDSON, JUDGE  
ERNEST BELCHER, COMMISSIONER  
WESLEY DICE, COMMISSIONER  
GLENN HAYNES, CLERK

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## COURTS OF CIVIL APPEALS

### *First District—Houston*

SPURGEON BELL, CHIEF JUSTICE

PHIL D. WOODRUFF, ASSOCIATE JUSTICE      EWING WERLEIN, ASSOCIATE JUSTICE  
ROLA HAMM, CLERK

### *Second District—Fort Worth*

FRANK A. MASSEY, CHIEF JUSTICE

THOMAS J. RENFRO, ASSOCIATE JUSTICE      BEN W. BOYD, ASSOCIATE JUSTICE  
MRS. K. M. BURKHALTER, CLERK  
LIDA SWANSON, DEPUTY CLERK

### *Third District—Austin*

ROY C. ARCHER, CHIEF JUSTICE

ROBERT G. HUGHES, ASSOCIATE JUSTICE      RAYMOND GRAY, ASSOCIATE JUSTICE  
MRS. R. E. MOORE, CLERK

### *Fourth District—San Antonio*

W. O. MURRAY, CHIEF JUSTICE

JACK POPE, ASSOCIATE JUSTICE      H. D. BARROW, ASSOCIATE JUSTICE  
ROBERT L. COOK, CLERK

## JUDGES AND OFFICERS

### COURTS OF CIVIL APPEALS—Cont'd.

#### *Fifth District—Dallas*

DICK DIXON, CHIEF JUSTICE

TOWNE YOUNG, ASSOCIATE JUSTICE

WM. M. CRAMER, ASSOCIATE JUSTICE

JUSTIN G. BURT, CLERK

#### *Sixth District—Texarkana*

T. C. CHADICK, CHIEF JUSTICE

WILLIAM J. FANNING, ASSOCIATE JUSTICE

MATT DAVIS, ASSOCIATE JUSTICE

M. E. MERRILL, CLERK

#### *Seventh District—Amarillo*

JAMES G. DENTON, CHIEF JUSTICE

ERNEST O. NORTHCUTT, ASSOCIATE JUSTICE

ALTON B. CHAPMAN, ASSOCIATE JUSTICE

ELMO PAYNE, CLERK

#### *Eighth District—El Paso*

JIM C. LANGDON, CHIEF JUSTICE

ALAN R. FRASER, ASSOCIATE JUSTICE

W. G. ABBOTT, ASSOCIATE JUSTICE

E. J. REDDING, CLERK

#### *Ninth District—Beaumont*

JOHN R. ANDERSON, CHIEF JUSTICE

L. B. HIGHTOWER, ASSOCIATE JUSTICE

W. T. McNEILL, ASSOCIATE JUSTICE

ELIZABETH LE BLANC, CLERK

#### *Tenth District—Waco*

FRANK G. McDONALD, CHIEF JUSTICE

JAKE TIREY, ASSOCIATE JUSTICE

FRANK M. WILSON, ASSOCIATE JUSTICE

ROBERT IVY GAGE, CLERK

#### *Eleventh District—Eastland*

CLYDE GRISSOM, CHIEF JUSTICE

CECIL C. COLLINGS, ASSOCIATE JUSTICE

ESCO WALTER, ASSOCIATE JUSTICE

HOMER SMITH, CLERK

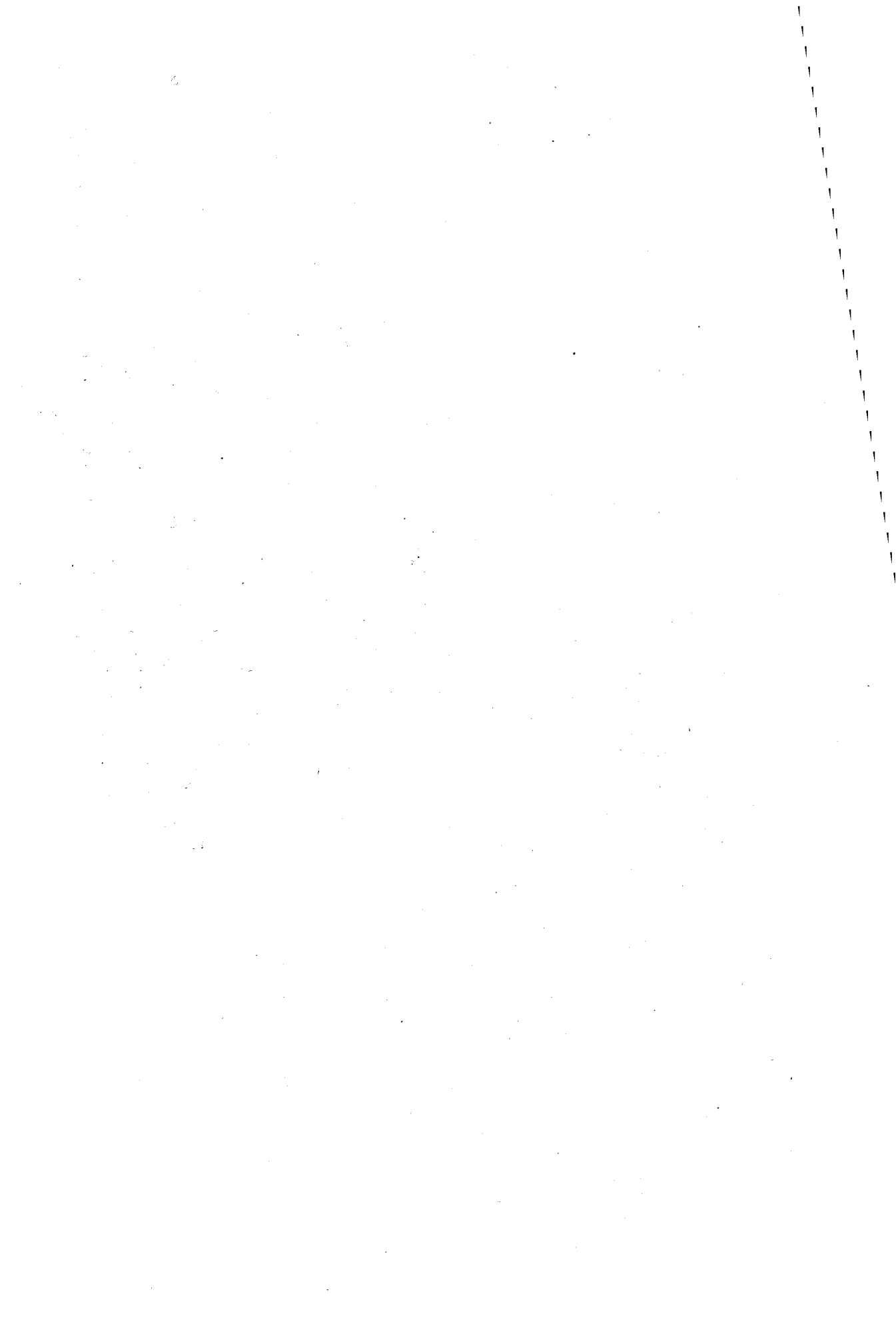
WILL WILSON, ATTORNEY GENERAL

**OFFICIALS**  
**OF**  
**THE STATE OF TEXAS**

---

PRICE DANIEL ----- Governor ----- Liberty  
BEN RAMSEY ----- Lieutenant Governor ----- San Augustine  
WILL WILSON ----- Attorney General ----- Dallas  
ZOLLIE STEAKLEY ----- Secretary of State ----- Austin  
JESSE JAMES ----- State Treasurer ----- Austin  
JOHN C. WHITE ----- Commissioner of Agriculture ----- Wichita Falls  
BILL ALLCORN ----- Commissioner of General Land Office ----- Brady  
ROBERT S. CALVERT ----- Comptroller of Public Accounts ----- Austin  
JAMES M. FALKNER ----- Banking Commissioner ----- Austin  
CHARLES H. CAVNESS -- State Auditor ----- Austin

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# SENATE

PRESIDENT ----- Ben Ramsey  
 PRESIDENT PRO TEMPORE, 1st C. S. ----- Jarrard Secrest  
 PRESIDENT PRO TEMPORE, 2nd C. S. ----- Andy Rogers  
 PRESIDENT PRO TEMPORE, 3rd C. S. ----- Abraham Kazen, Jr.  
 SECRETARY OF THE SENATE ----- Charles A. Schnabel, Jr.

<i>Name</i>	<i>Dist.</i>
Aikin, A. M., Jr. ----- Paris -----	1
Baker, Robert W. ----- 4614 Merwin St. ----- Houston -----	6
Bradshaw, Floyd ----- Box 121 ----- Weatherford -----	22
Colson, Mrs. Neveille H. -- Navasota -----	5
Crump, Louis ----- Box 417 ----- San Saba -----	16
Dies, Martin, Jr. ----- 114 W. Shepherd --- Lufkin -----	3
Fly, Wm. S. ----- 110 W. Forrest ----- Victoria -----	18
Fuller, Jep S. ----- 228 Adams Bldg. --- Port Arthur -----	4
Gonzalez, Henry B. ----- 501 Houston Bldg. -- San Antonio -----	26
Hardeman, Dorsey B. --- Box 70 ----- San Angelo -----	25
Hazlewood, Grady ----- 518 Petroleum Bldg. - Amarillo -----	31
Herring, Charles F. ----- Perry Brooks Bldg. - Austin -----	14
Hudson, Hubert R. ----- First Natl. Bk. Bldg. Brownsville -----	27
Kazen, Abraham, Jr. --- Raymond Bldg. --- Laredo -----	21
Krueger, Culp ----- Box 1390 ----- El Campo -----	15
Lane, Wardlow ----- Center -----	2
Martin, Crawford C. --- Box 257 ----- Hillsboro -----	12
Moffett, George ----- Chillicothe -----	23
Moore, William T. ----- Box 1187 ----- Bryan -----	11
Owen, Frank, III ----- 206 Bassett Tower -- El Paso -----	29
Parkhouse, George ----- 1226 Natl. City Bldg. Dallas -----	8
Ratliff, David W. ----- Box 1123 ----- Stamford -----	24
Reagan, Bruce A. ----- 3126 Topeka ----- Corpus Christi -----	20
Roberts, Ray ----- 704 North Morris -- McKinney -----	9
Rogers, Andy ----- 910 Ave. H., N. W. -- Childress -----	30
Schwartz, A. R. ----- 1414 Bayou Shore Drive ----- Galveston -----	17
Secrest, Jarrard ----- First Natl. Bldg. --- Temple -----	13
Smith, Preston ----- 105 College Ave. --- Lubbock -----	28
Weinert, R. A. ----- Seguin -----	19
Willis, Doyle ----- Trans-American Life Bldg. ----- Ft. Worth -----	10
Wood, Bill ----- 503 Blackstone Bldg. Tyler -----	7

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# HOUSE OF REPRESENTATIVES

SPEAKER ----- Waggoner Carr  
 CHIEF CLERK ----- Mrs. Dorothy Hallman

<i>Name</i>	<i>Dist.</i>
Adams, James V. ----- c/o Court House ----- Mt. Pleasant -----	3
Allen, John ----- 1003 E. Birdsong ----- Longview -----	13
Anderson, Louis ----- Box 81 ----- Midland -----	102
Atwell, Ben ----- 410 Fidelity Union Bldg. ----- Dallas -----	51-2
Ballman, Charles L. ----- Box 575 ----- Borger -----	86
Bartram, R. A. ----- Box 69 ----- New Braunfels -----	67
Bates, James S. ----- Box 111 ----- Edinburg -----	38-1
Bell, Marshall O. ----- 905 Alamo Natl. Bldg. ----- San Antonio -----	68-5
Bishop, A. J., Jr. ----- Rt. 4 ----- Winters -----	77
Blaine, John E. ----- 1326 E. Yandell Blvd. ----- El Paso -----	105-2
Blanchard, H. J. ----- 911 Great Plains Bldg. ----- Lubbock -----	97-2
Bowers, Robert L., Jr. ----- Box 351 ----- Brownfield -----	98
Boysen, Stanley ----- Box 228 ----- Yoakum -----	47
Brashear, Paul ----- 305 W. 7th St. ----- Cisco -----	76
Bridges, Ronald W. ----- 429 Rita Drive ----- Corpus Christi -----	36-1
Bristow, J. Gordon ----- Box 230 ----- Big Spring -----	101
Buchanan, J. W. ----- Box 935 ----- Dumas -----	95
Burgess, Steve ----- Rt. 1, Box 98 ----- Nacogdoches -----	6
Burkett, Joe, Jr. ----- Schreiner Bank Bldg., ----- Kerrville -----	78
Butler, Jerry ----- Box 601 ----- Kenedy -----	58
Caldwell Neil ----- Alvin -----	23
Cannon, Joe ----- 109 South Kaufman ----- Mexia -----	55
Carr, Waggoner ----- 801 Lubbock Natl. Bk. Bldg. ----- Lubbock -----	97-1
Carriker, Max D. ----- Roby -----	91
Clements, Jamie H. ----- Box 737 ----- Crockett -----	28
Chapman, Joe N. ----- Box 233 ----- Sulphur Springs -----	11
Cloud, Ed J. ----- Box 28 ----- Rule -----	83
Cole, Criss ----- 711 Main Bldg. ----- Houston -----	22-7
Coley, Harold H. ----- Box 1464 ----- Conroe -----	29
Collins, Sam Forse ----- Box 36 ----- Newton -----	7
Conley, Carl C. ----- 565 W. Hidalgo ----- Raymondville -----	40f
Connell, Jack, Jr. ----- 2309 Speedway ----- Wichita Falls -----	81-2
Cook, George H. ----- 309 N. Lee St. ----- Odessa -----	103
Cory, R. H. ----- Victoria Natl. Bank Bldg. ----- Victoria -----	33
Cotten, James M. ----- 110 College ----- Weatherford -----	72
Cowen, Warren C. ----- 3640 W. Seminary ----- Ft. Worth -----	60-7



HOUSE OF REPRESENTATIVES

<i>Name</i>	<i>Dist.</i>
Cox, John T. ----- 1415 N. 3rd St. ----- Temple -----	63-1
Crosthwait, John L. ----- 3709 Amherst St. ----- Dallas -----	51-1
Daily, Roger ----- 711 Main Bldg. ----- Houston -----	22-6
Day, J. C., Jr. ----- Box 121 ----- Brookshire -----	30
De la Garza, Eligio ----- Box 805 ----- Mission -----	38-3
Dewey, B. H., Jr. ----- Box 347 ----- Bryan -----	44
Duff, Miss Virginia ----- Ferris -----	52
Dugas, Louis, Jr. ----- Box 186 ----- Orange -----	8
Dungan, W. T. ----- 400 E. La. St. ----- McKinney -----	50
Eckhardt, Bob ----- 4527 W. Alabama ----- Houston -----	22-2
Ehrle, Will ----- Box 29 ----- Childress -----	88
Fenoglio, Anthony ----- Box 570 ----- Nocona -----	71
Foreman, Wilson ----- 4407 Ave. D. ----- Austin -----	65-1
Gladden, Don ----- 506 Burkburnett Bldg. ----- Ft. Worth -----	60-2
Glass, W. W. ----- 401 S. Bolton ----- Jacksonville -----	17
Glusing, Ben A. ----- 615 E. Elizabeth ----- Kingsville -----	37f
Green, Howard ----- 7316 Oakland Lane ----- Ft. Worth -----	60-6
Guffey, Lloyd M. ----- 613 N. Mechanic ----- El Campo -----	31
Hale, L. DeWitt ----- 709 Wilson Bldg. ----- Corpus Christi -----	36-3
Harrington, D. Roy ----- 4007 Third St. ----- Port Arthur -----	9-3
Heatly, W. S. ----- Drawer 1 ----- Paducah -----	82
Hinson, Geo. T. ----- Box 387 ----- Mineola -----	12
Hollowell, Bill ----- 618 High St. ----- Grand Saline -----	26
Hooks, J. C. ----- Box 812 ----- Livingston -----	19
Huebner, John A., Sr. ----- Box 1347 ----- Bay City -----	32
Huffman, Reagan R. ----- Box 622 ----- Marshall -----	4
Hughes, Charles E. ----- Commercial Bldg. ----- Sherman -----	48
Hughes, Robt. H. ----- 3504 Drexel Drive ----- Dallas -----	51-7
Hutchins, Edgar, Jr. ----- Rt. 1 ----- Greenville -----	25
Isaacks, Miss Maud ----- 3021 Federal ----- El Paso -----	105-1
Jackson, Robert C., Jr. ----- Box 272 ----- Corsicana -----	42
James, Tom ----- 3214 Newcastle Dr. ----- Dallas -----	51-4
Jamison, Alonzo W., Jr. ----- 616 W. Oak St. ----- Denton -----	59
Jarvis, Ben E. ----- Fair Foundation Bldg., ----- Tyler -----	14
Johnson, Robert E. ----- 1502 Dallas Fed. Sav- ings Bldg. ----- Dallas -----	51-6
Johnston, Dean ----- 3854 Arbor St. ----- Houston -----	22-1
Jones, Bill ----- Mercantile Bank Bldg. ----- Dallas -----	51-3
Jones, Jerome ----- County Court House ----- Galveston -----	21-1
Jones, Obie ----- 1307 Larkwood ----- Austin -----	65-2
Kennard, Don ----- 212 Casa Blanca ----- Ft. Worth -----	60-3
Kilgarlin, (Bill) Wm. W. ----- 8510 Glen Lock Drive ----- Houston -----	22-4
Kilpatrick, Rufus U. ----- Box 968 ----- Beaumont -----	9-1
Koliba, Homer L., Sr. ----- 1124 Front St. ----- Columbus -----	46
Korioth, Tony ----- 1412 N. Wood St. ----- Sherman -----	49f
Lary, Yale ----- 6817 Kirkwood Rd. ----- Ft. Worth -----	60-1

## HOUSE OF REPRESENTATIVES

<i>Name</i>	<i>Dist.</i>
Latimer, Truett ----- 1406 Mimosa St. --- Abilene -----	84
Laurel, Oscar M. ----- Box 1094 ----- Laredo -----	80
LaValle, Peter J. ----- Box 366 ----- Texas City -----	21-2
Leaverton, H. A. ----- Box 196 ----- Evant -----	62
Lewis, Ben H. ----- 307 Nottingham Dr. --- Richardson -----	51-5
McCoppin, George W. --- 2017 Walnut ----- Texarkana -----	1-1
McDonald, Scott ----- 811 Continental Life Bldg. ----- Ft. Worth -----	60-4
McGregor, Frank B. --- 4207 Mockingbird Lane ----- Waco -----	53-2
McGregor, Malcolm ----- Bassett Tower ----- El Paso -----	105-4
McIlhany, Grainger W. --- Box 276 ----- Wheeler -----	87
McKay, James A., Jr. --- 1107 Frost Natl. Bank Bldg. ----- San Antonio -----	68-4
Martin, Lloyd C. ----- Box 34 ----- Normangee -----	43
Matthew, C. T. ----- Rt. 3 ----- Yoakum -----	34
Mays, Abe M., Jr. ----- c/o Carney & Mays --- Atlanta -----	2
Miller, Clyde ----- 347 Shotwell ----- Houston -----	22-3
Mullen, Bob ----- Box 60 ----- Alice -----	70
Murray, Menton J. ----- Law Bldg. ----- Harlingen -----	39-1
Oliver, W. T. ----- 2250 Sixth St. ----- Port Neches -----	9-2
Osborn, Jesse M. ----- Box 416 ----- Muleshoe -----	96
Parish, Harold B. ----- Box 6 ----- Taft -----	35
Parsons, Sam H. ----- Rt. 5 ----- Henderson -----	16
Pearcy, C. W., Jr. ----- 1117 N. 2nd St. ----- Temple -----	63-2
Pieratt, W. H. (Bill) --- Box 511 ----- Giddings -----	57
Pipkin, Maurice S. ----- Box 1032 ----- Brownsville -----	39-2
Preston, George L. ----- 431-24th S. E. ----- Paris -----	10
Ramsey, V. L. ----- Box 116 ----- Beckville -----	5
Richardson, Jack ----- 929 Black St. ----- Uvalde -----	79
Roberts, Ronald ----- 627 Elm St. ----- Hillsboro -----	54
Roberts, Wesley ----- 507 So. First ----- Lamesa -----	99
Rosas, Mauro ----- Caples Bldg. ----- El Paso -----	105-3
Rosson, Renal B. ----- 1824-26th St. ----- Snyder -----	90
Russell, Raymond R., Jr. --- 239 Brahan ----- San Antonio -----	68-3
Sadler, Jerry ----- Sadler Bldg. ----- Palestine -----	27
Sandahl, Charles L., Jr. --- 2412 E. 1st ----- Austin -----	65-3
Schmid, Sanford ----- Rt. 3 (Shelby) ----- Fayetteville -----	45
Schram, O. H. ----- Box 108 ----- Taylor -----	64
Seeligson, F. S. ----- 1604 Natl. Bank Commerce Bldg. --- San Antonio -----	68-7
Shannon, Tommy ----- Box 3098 ----- Ft. Worth -----	60-5
Shaw, W. E. ----- Box 52 ----- Forney -----	41
Slack, Richard C. ----- 511 Hickory ----- Pecos -----	104
Smith, Max C. ----- Box 16 ----- San Marcos -----	66
Smith, Will L. ----- 336 Bowie ----- Beaumont -----	9-4
Spears, Franklin Scott --- Majestic Bldg. ----- San Antonio -----	68-2
Spilman, Wade F. ----- Box 1128 ----- McAllen -----	38-2
Springer, Ted B. ----- 1314 Bellaire ----- Amarillo -----	94f

## HOUSE OF REPRESENTATIVES

<i>Name</i>	<i>Dist.</i>
Stewart, Vernon J. ----- 2901 Lebanon -----	Wichita Falls ----- 81-1
Strickland, R. L. ----- 326 Laramie -----	San Antonio ----- 68-6
Stroman, W. A. ----- Box 151 -----	San Angelo ----- 92
Sudderth, Ben D. ----- 707 N. Elm -----	Comanche ----- 73
Terrell, L. C. -----	DeKalb ----- 1-2
Thurman, Leon ----- Box 2 -----	Anson ----- 85
Thurmond, Roger H., Jr. -- Box 1053 -----	Del Rio ----- 100
Townsend, James T. ----- 1507 Pine -----	Brady ----- 74
Tunnell, Byron M. ----- 351 Tyler Bank & Trust Co. Bldg. --	Tyler ----- 15f
Turman, James A. -----	Gober ----- 24
Vallance, R. L. ----- 309 Steves Ave. ----	San Antonio ----- 68-1
Ward, J. E. ----- Box 91 -----	Glen Rose ----- 61
Watson, Murray, Jr. ---- 308 Texas Ave. ----	Mart ----- 53-3
Wells, H. G. ----- Box 746A -----	Tulia ----- 89
Wheeler, Bob -----	Tilden ----- 69
Whitfield, J. Charles, Jr. -- 3001 Milam -----	Houston ----- 22-8
Wilson, George Truett --- Box 9 -----	Newcastle ----- 75
Wilson, J. Edgar ----- 1012 Milam St. ----	Amarillo ----- 93
Winfree, J. E., Sr. ----- 813 Scanlan Bldg. ---	Houston ----- 22-5
Winston, William D. ---- P. O. Box 1536 ----	Lufkin ----- 18
Woods, Jack ----- 1824 Kendrick Lane	Waco ----- 53-1
Woolsey, W. N. ----- 317 Bermuda Place --	Corpus Christi ---- 36-2
Yezak, Herman -----	Bremond ----- 56
Zbranek, J. C. ----- Box 890 -----	Liberty ----- 20

# CONSTITUTION OF THE STATE OF TEXAS

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## ADOPTED

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### ARTICLE III

#### LEGISLATIVE DEPARTMENT

§ 51a. Payment of assistance to needy aged, needy blind and needy children

Subsection 51a—1. Medical care payments for needy aged, needy blind, needy children and the permanently and totally disabled

The Legislature shall have the power to provide by General Laws and to make payment for same, under such limitations and restrictions as may be deemed by the Legislature expedient, for direct or vendor payments for medical care on behalf of needy recipients of Old Age Assistance, Aid to the Blind, or Aid to Dependent Children as provided for in Section 51a of Article III and on behalf of needy recipients of Aid to the Permanently and Totally Disabled as provided for in Section 51-b of Article III of the Constitution of the State of Texas. The payments for such medical care on behalf of such recipients shall be in addition to the direct assistance to such recipients, and shall be in such amounts as provided by the Legislature; provided, however, that the amounts paid out of State funds for such purposes shall never exceed the amounts paid out of Federal funds for such purposes.

The Legislature shall have the authority to accept from the Federal Government of the United States, such financial aid on behalf of the needy aged, needy blind, needy children, and needy permanently and totally disabled persons as such Government may offer not inconsistent with restrictions herein set forth. Adopted Nov. 4, 1958.

§ 52. Counties, cities, towns or other political corporations or subdivisions; lending credit; grants

Validation of road bonds, see art. 752y—5.

### ARTICLE IV

#### EXECUTIVE DEPARTMENT

Sec. 3a. Death, disability or failure to qualify of persons receiving highest vote

Emergency Interim Executive Succession Act, see Vernon's Ann.Civ.St. art. 6252—10.

**ARTICLE V****JUDICIAL DEPARTMENT****§ 28. Vacancies in judicial offices**

Sec. 28. Vacancies In Offices Of Judges Of Superior Courts To Be Filled By The Governor.

Vacancies in the office of judges of the Supreme Court, the Court of Criminal Appeals, the Court of Civil Appeals and the District Courts shall be filled by the Governor until the next succeeding General Election; and vacancies in the office of County Judge and Justices of the Peace shall be filled by the Commissioners Court until the next succeeding General Election. Adopted Nov. 4, 1958.

**ARTICLE IX****COUNTIES****§ 5. City of Amarillo; Wichita County; Jefferson County; creation of hospital districts**

Sec. 5. (a) The Legislature may by law authorize the creation of two hospital districts, one to be coextensive with and have the same boundaries as the incorporated City of Amarillo, as such boundaries now exist or as they may hereafter be lawfully extended, and the other to be coextensive with Wichita County.

If such district or districts are created, they may be authorized to levy a tax not to exceed Seventy-five Cents (75¢) on the One Hundred Dollars (\$100.00) valuation of taxable property within the district; provided, however, no tax may be levied until approved by a majority vote of the participating resident qualified property taxpaying voters who have duly rendered their property for taxation. The maximum rate of tax may be changed at subsequent elections so long as obligations are not impaired, and not to exceed the maximum limit of Seventy-five Cents (75¢) per One Hundred Dollars (\$100.00) valuation, and no election shall be required by subsequent changes in the boundaries of the City of Amarillo.

If such tax is authorized, no political subdivision or municipality within or having the same boundaries as the district may levy a tax for medical or hospital care for needy individuals, nor shall they maintain or erect hospital facilities, but the district shall by resolution assume all such responsibilities and shall assume all of the liabilities and obligations (including bonds and warrants) of such subdivisions or municipalities or both. The maximum tax rate submitted shall be sufficient to discharge such obligations, liabilities, and responsibilities, and to maintain and operate the hospital system, and the Legislature may authorize the district to issue tax bonds for the purpose of the purchase, construction, acquisition, repair or renovation of improvements and initially equipping the same, and such bonds shall be payable from said Seventy-five Cents (75¢) tax. The Legislature shall provide for transfer of title to properties to the district.

(b) The Legislature may by law permit the County of Potter (in which the City of Amarillo is partially located) to render financial aid to that district by paying a part of the expenses of operating and maintaining the system and paying a part of the debts of the district (whether assumed or created by the district) and may authorize the levy of a

ADOPTED AMENDMENTS     **Art. 11, § 11**

tax not to exceed Ten Cents (10¢) per One Hundred Dollars (\$100.00) valuation (in addition to other taxes permitted by this Constitution) upon all property within the county but without the City of Amarillo at the time such levy is made for such purposes. If such tax is authorized, the district shall by resolution assume the responsibilities, obligations, and liabilities of the county in the manner and to the extent hereinabove provided for political subdivisions having boundaries coextensive with the district, and the county shall not thereafter levy taxes (other than herein provided) for hospital purposes nor for providing hospital care for needy individuals of the county.

(c) The Legislature may by law authorize the creation of a hospital district within Jefferson County, the boundaries of which shall include only the area comprising the Jefferson County Drainage District No. 7 and the Port Arthur Independent School District, as such boundaries existed on the first day of January, 1957, with the power to issue bonds for the sole purpose of purchasing a site for, and the construction and initial equipping of, a hospital system, and with the power to levy a tax of not to exceed Seventy-five Cents (75¢) on the One Hundred Dollars (\$100.00) valuation of property therein for the purpose of paying the principal and interest on such bonds.

The creation of such hospital district shall not be final until approved at an election by a majority of the resident property taxpaying voters voting at said election who have duly rendered their property for taxation upon the tax rolls of either said Drainage or said School District, nor shall such bonds be issued or such tax be levied until so approved by such voters.

The district shall not have the power to levy any tax for maintenance or operation of the hospital or facilities, but shall contract with other political subdivisions of the state or private individuals, associations, or corporations for such purposes.

If the district hereinabove authorized is finally created, no other hospital district may be created embracing any part of the territory within its boundaries, but the Legislature by law may authorize the creation of a hospital district incorporating therein the remainder of Jefferson County, having the powers and duties and with the limitations presently provided by Article IX, Section 4, of the Constitution of Texas, except that such district shall be confirmed at an election wherein the resident qualified property taxpaying voters who have duly rendered their property within such proposed district for taxation on the county rolls, shall be authorized to vote. A majority of those participating in the election voting in favor of the district shall be necessary for its confirmation and for bonds to be issued.

(d) Should the Legislature enact enabling laws in anticipation of the adoption of this amendment, such Acts shall not be invalid because of their anticipatory character. Adopted Nov. 4, 1958.

**ARTICLE XI**

**MUNICIPAL CORPORATIONS**

**§ 11. Term of office exceeding two years in home rule and general law cities; vacancies**

Sec. 11. A Home Rule City may provide by charter or charter amendment, and a city, town or village operating under the general laws may provide by majority vote of the qualified voters voting at an election called

for that purpose, for a longer term of office than two (2) years for its officers, either elective or appointive, or both, but not to exceed four (4) years; provided, however, that tenure under Civil Service shall not be affected hereby.

Provided, however, if any of such officers, elective or appointive, shall announce their candidacy, or shall in fact become a candidate, in any general, special or primary election, for any office of profit or trust under the laws of this State or the United States other than the office then held, at any time when the unexpired term of the office then held shall exceed one (1) year, such announcement or such candidacy shall constitute an automatic resignation of the office then held, and the vacancy thereby created shall be filled pursuant to law in the same manner as other vacancies for such office are filled.

A municipality so providing a term exceeding two (2) years but not exceeding four (4) years for any of its non-civil service officers must elect all of the members of its governing body by majority vote of the qualified voters in such municipality, and any vacancy or vacancies occurring on such governing body shall not be filled by appointment but must be filled by majority vote of the qualified voters at a special election called for such purpose within one hundred and twenty (120) days after such vacancy or vacancies occur. Adopted Nov. 4, 1958.

## **ARTICLE XVI**

### **GENERAL PROVISIONS**

#### **§ 56. Appropriations for development and dissemination of information concerning Texas resources**

Sec. 56. The Legislature of the State of Texas shall have the power to appropriate money and establish the procedure necessary to expend such money for the purpose of developing information about the historical, natural, agricultural, industrial, educational, marketing, recreational and living resources of Texas, and for the purpose of informing persons and corporations of other states through advertising in periodicals having national circulation, and the dissemination of factual information about the advantages and economic resources offered by the State of Texas; providing, however, that neither the name nor the picture of any living state official shall ever be used in any of said advertising, and providing that the Legislature may require that any sum of money appropriated hereunder shall be matched by an equal sum paid into the State Treasury from private sources before any of said money may be expended. Adopted Nov. 4, 1958.

Advertising resources of Texas, see art. 6144e.

#### **§ 62. State and county retirement, disability and death compensation funds**

(a) The Legislature shall have the authority to levy taxes to provide a State Retirement, Disability and Death Compensation Fund for the officers and employees of the State, and may make such reasonable inclusions, exclusions, or classifications of officers and employees of this State as it deems advisable. The Legislature may also include officers and employees of judicial districts of the State who are or have been compensated in whole or in part directly or indirectly by the State, and

ADOPTED AMENDMENTS     **Art. 16, § 65**

may make such other reasonable inclusions, exclusions, or classification of officers and employees of judicial districts of this State as it deems advisable. Persons participating in a retirement system created pursuant to Section 1-a of Article V of this Constitution shall not be eligible to participate in the Fund authorized in this Subsection; and persons participating in a retirement system created pursuant to Section 48-a of Article III of this Constitution shall not be eligible to participate in the Fund authorized in this Subsection except as permitted by Section 63 of Article XVI of this Constitution. Provided, however, any officer or employee of a county as provided for in Article XVI, Section 62, Subsection (b) of this Constitution, shall not be eligible to participate in the Fund authorized in this Subsection, except as otherwise provided herein. The amount contributed by the State to such Fund shall equal the amount paid for the same purpose from the income of each such person, and shall not exceed at any time five per centum (5%) of the compensation paid to each such person by the State.

All funds provided from the compensation of such person or by the State or Texas for such Retirement, Disability and Death Compensation Fund, as are received by the Treasury of the State of Texas, shall be invested in bonds of the United States, or in bonds issued by any agency of the United States Government, the payment of the principal of and interest on which is guaranteed by the United States; or in such other securities as are now or hereafter may be permitted by law as investments for the Permanent University Fund or for the Permanent School Fund of this State, under the same limitations and restrictions imposed by the Constitution for investment of those funds and subject to such regulations as the Legislature may provide. However, a sufficient amount of said Fund shall be kept on hand to meet the immediate payment of the amount likely to become due each year out of said Fund, such amount of funds to be kept on hand to be determined by the agency which may be provided by law to administer said Fund.

Should the Legislature enact enabling laws in anticipation of the adoption of this Amendment, such legislation shall not be invalid by reason of its anticipatory character. Adopted Nov. 4, 1958.

**§ 65. Transition from two year to four year terms of office**

Sec. 65. Staggering Terms of Office—The following officers elected at the General Election in November, 1954, and thereafter, shall serve for the full terms provided in this Constitution:

(a) District Clerks; (b) County Clerks; (c) County Judges; (d) Judges of County Courts at Law, County Criminal Courts, County Probate Courts and County Domestic Relations Courts; (e) County Treasurers; (f) Criminal District Attorneys; (g) County Surveyors; (h) Inspectors of Hides and Animals; (i) County Commissioners for Precincts Two and Four; (j) Justices of the Peace.

Notwithstanding other provisions of this Constitution, the following officers elected at the General Election in November, 1954, shall serve only for terms of two (2) years: (a) Sheriffs; (b) Assessors and Collectors of Taxes; (c) District Attorneys; (d) County Attorneys; (e) Public Weighers; (f) County Commissioners for Precincts One and Three; (g) Constables. At subsequent elections, such officers shall be elected for the full terms provided in this Constitution.

In any district, county or precinct where any of the aforementioned offices is of such nature that two (2) or more persons hold such office, with the result that candidates file for "Place No. 1," "Place No. 2," etc.,



the officers elected at the General Election in November, 1954, shall serve for a term of two (2) years if the designation of their office is an uneven number, and for a term of four (4) years if the designation of their office is an even number. Thereafter, all such officers shall be elected for the terms provided in this Constitution.

Provided, however, if any of the officers named herein shall announce their candidacy, or shall in fact become a candidate, in any General, Special or Primary Election, for any office of profit or trust under the laws of this State or the United States other than the office then held, at any time when the unexpired term of the office then held shall exceed one (1) year, such announcement or such candidacy shall constitute an automatic resignation of the office then held, and the vacancy thereby created shall be filled pursuant to law in the same manner as other vacancies for such office are filled. Adopted Nov. 4, 1958.

**§ 66. Texas Rangers; retirement and disability pension system for Rangers ineligible for membership in Employees Retirement System**

Sec. 66. The Legislature shall have authority to provide for a system of retirement and disability pensions for retiring Texas Rangers who have not been eligible at any time for membership in the Employees Retirement System of Texas as that retirement system was established by Chapter 352, Acts of the Fiftieth Legislature, Regular Session, 1947, and who have had as much as two (2) years service as a Texas Ranger, and to their widows; providing that no pension shall exceed Eighty Dollars (\$80) per month to any such Texas Ranger or his widow, provided that such widow was legally married prior to January 1, 1957, to a Texas Ranger qualifying for such pension.

These pensions may be paid only from the special fund created by Section 17, Article VII for a payment of pensions for services in the Confederate army and navy, frontier organizations, and the militia of the State of Texas, and for widows of such soldiers serving in said armies, navies, organizations or militia. Adopted Nov. 4, 1958.

CONSTITUTION—PROPOSED AMENDMENTS

PROPOSED AMENDMENTS

ARTICLE III

LEGISLATIVE DEPARTMENT

Sec. 24. Compensation and expenses of members of Legislature

Members of the Legislature shall receive from the Public Treasury an annual salary of not exceeding Four Thousand, Eight Hundred Dollars (\$4,800) per year and a per diem of not exceeding Twelve Dollars (\$12) per day for the first one hundred and twenty (120) days only of each Regular Session and for thirty (30) days of each Special Session of the Legislature. No Regular Session shall be of longer duration than one hundred and forty (140) days.

In addition to the per diem the Members of each House shall be entitled to mileage in going to and returning from the seat of government, which mileage shall not exceed Two Dollars and Fifty Cents (\$2.50) for every twenty-five (25) miles, the distance to be computed by the nearest and most direct route of travel, from a table of distances prepared by the Comptroller to each county seat now or hereafter to be established; no Member to be entitled to mileage for any extra Session that may be called within one (1) day after the adjournment of the Regular or Called Session.

Proposed by House Joint Resolution No. 3, Acts 1959, 56th Leg., p. 1222. For submission to the people on Nov. 8, 1960.

Sec. 49—b. Veterans' Land Board; bond issue; Veterans' Land Fund; purchase of lands and resale to Texas veterans

The foregoing notwithstanding, bonds hereafter issued by the Veterans' Land Board pursuant to the authority of this Section 49—b of the Constitution may bear a rate or rates of interest not to exceed three and one-half percent ( $3\frac{1}{2}\%$ ) per annum.

This amendment shall become effective upon its adoption.

Proposed by Senate Joint Resolution No. 6, Acts 1959, 56th Leg., p. 1221. For submission to the people on Nov. 8, 1960.

ARTICLE IX

COUNTIES

Sec. 6. Lamar county; hospital district; creation; tax rate

The Legislature may by law authorize the creation of a Hospital District co-extensive with Lamar County, having the powers and duties and with the limitations presently provided in Article IX, Section 5(a), of the Constitution of Texas, as it applies to Wichita County, except that the maximum rate of tax that the said Lamar County Hospital District may be authorized to levy shall be seventy-five cents (75¢) per One Hundred Dollar (\$100) valuation of taxable property within the District, subject to district taxation.

Proposed by House Joint Resolution No. 39, Acts 1959, 56th Leg., p. 1224. For submission to the people on Nov. 8, 1960.

## CONSTITUTION—PROPOSED AMENDMENTS

### Sec. 7. Hidalgo county; hospital district; creation; tax rate

The Legislature may by law authorize the creation of a Hospital District co-extensive with Hidalgo County, having the powers and duties and with the limitations presently provided in Article IX, Section 5(a), of the Constitution of Texas, as it applies to Hidalgo County, except that the maximum rate of tax that the said Hidalgo County Hospital District may be authorized to levy shall be ten cents (10¢) per One Hundred Dollars (\$100) valuation of taxable property within the District subject to district taxation.

Proposed by House Joint Resolution No. 39, Acts 1959, 56th Leg., p. 1224. For submission to the people on Nov. 8, 1960.

### Sec. 8. County Commissioners Precinct No. 4 of Comanche County; hospital district; creation; tax rate

The Legislature may by law authorize the creation of a Hospital District to be co-extensive with the limits of County Commissioners Precinct No. 4 of Comanche County, Texas.

If such District is created, it may be authorized to levy a tax not to exceed seventy-five cents (75¢) on the One Hundred Dollar (\$100) valuation of taxable property within the District; provided, however, no tax may be levied until approved by a majority vote of the participating resident qualified property taxpaying voters who have duly rendered their property for taxation. The maximum rate of tax may be changed at subsequent elections so long as obligations are not impaired, and not to exceed the maximum limit of seventy-five cents (75¢) per One Hundred Dollar (\$100) valuation, and no election shall be required by subsequent changes in the boundaries of the Commissioners Precinct No. 4 of Comanche County.

If such tax is authorized, no political subdivision or municipality within or having the same boundaries as the District may levy a tax for medical or hospital care for needy individuals, nor shall they maintain or erect hospital facilities, but the District shall by resolution assume all such responsibilities and shall assume all of the liabilities and obligations (including bonds and warrants) of such subdivisions or municipalities or both. The maximum tax rate submitted shall be sufficient to discharge such obligations, liabilities, and responsibilities, and to maintain and operate the hospital system, and the Legislature may authorize the District to issue tax bonds for the purpose of the purchase, construction, acquisition, repair or renovation of improvements and initially equipping the same, and such bonds shall be payable from said seventy-five cent (75¢) tax. The Legislature shall provide for transfer of title to properties to the District.

(b) The Legislature may by law permit the County of Comanche to render financial aid to that District by paying a part of the expenses of operating and maintaining the system and paying a part of the debts of the District (whether assumed or created by the District) and may authorize the levy of a tax not to exceed ten cents (10¢) per One Hundred Dollar (\$100) valuation (in addition to other taxes permitted by this Constitution) upon all property within the County but without the County Commissioners Precinct No. 4 of Comanche County at the time such levy is made for such purposes. If such tax is authorized, the District shall by resolution assume the responsibilities, obligations, and liabilities of the County in the manner and to the extent hereinabove provided for political subdivisions having boundaries co-extensive with the District, and the

## CONSTITUTION—PROPOSED AMENDMENTS

County shall not thereafter levy taxes (other than herein provided) for hospital purposes nor for providing hospital care for needy individuals of the County.

(c) Should the Legislature enact enabling laws in anticipation of the adoption of this amendment, such Acts shall not be invalid because of their anticipatory character.

Proposed by House Joint Resolution No. 39, Acts 1959, 56th Leg., p. 1224. For submission to the people on Nov. 8, 1960.

### ARTICLE XVI

#### GENERAL PROVISIONS

##### Sec. 11. Usury; rate of interest in absence of contract

The Legislature shall have authority to classify loans and lenders, license and regulate lenders, define interest and fix maximum rates of interest; provided, however, in the absence of legislation fixing maximum rates of interest all contracts for a greater rate of interest than ten per centum (10%) per annum shall be deemed usurious; provided, further, that in contracts where no rate of interest is agreed upon, the rate shall not exceed six per centum (6%) per annum. Should any regulatory agency, acting under the provisions of this Section, cancel or refuse to grant any permit under any law passed by the Legislature; then such applicant or holder shall have the right of appeal to the courts and granted a trial de novo as that term is used in appealing from the justice of peace court to the county court.

Proposed by House Joint Resolution No. 6, Acts 1959, 56th Leg., p. 1223. For submission to the people on Nov. 8, 1960.



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**TITLES AND CODES**  
**VERNON'S**  
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# VERNON'S REVISED CIVIL STATUTES OF THE STATE OF TEXAS

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## TITLE 2—ACCOUNTANTS—PUBLIC AND CERTIFIED

### Art. 41a. Public Accountancy Act of 1945

#### State Board of Public Accountancy

Sec. 4. The Texas State Board of Public Accountancy shall consist of nine (9) members, each of whom shall be a citizen of the United States and a resident of this State. Members of the Board and their successors shall be appointed by the Governor, with the advice and consent of the Senate, and shall be accountants in public practice; five (5) of whom shall hold certified public accountant certificates issued under the laws of this State; and four (4) shall be public accountants in public practice who shall hold permits issued under the laws of this State. Members of the present Board shall continue in office until their respective two (2) year terms have expired, at which time the Governor shall appoint their successors. The term of office of each member appointed for a term subsequent to the expiration of the two (2) year terms now being served by the present Board members, shall be six (6) years, except that in making the first appointments the Governor shall appoint three (3) members for a term of two (2) years each, three (3) members for a term of four (4) years each, and three members for a term of six (6) years each, so that the terms of three (3) members shall expire every two (2) years. Vacancies occurring during a term shall be filled by appointment for the unexpired term. The Governor shall remove from the Board any member whose certificate or permit to practice has been voided, revoked or suspended. As amended Acts 1959, 56th Leg., p. 1082, ch. 493, § 1.

Emergency. Effective June 1, 1959.

## TITLE 4—AGRICULTURE AND HORTICULTURE

## CHAPTER TWO—STATE SEED AND PLANT BOARD

## Art. 57. State Seed and Plant Board

The administration of the licensing provisions of Title 4, Chapter 2 of the Revised Civil Statutes and of Chapter 93, Acts of the Forty-first Legislature, First Called Session, 1929 (codified as Article 67a, Vernon's Texas Revised Civil Statutes and Article 1555a, Vernon's Texas Penal Code) shall be vested in a Board to be known as the State Seed and Plant Board, consisting of five (5) members to be appointed by the Governor, with the advice and consent of the Senate. One (1) member shall be from the Department of Genetics of the Agricultural and Mechanical College of Texas; one (1) member shall be from the Department of Agronomy of Texas Technological College; one (1) member shall be a Texas Registered or Certified seed producer; one (1) member shall be the Chief of the Division of Seeds of the Texas Department of Agriculture; and one (1) member shall be a person actively engaged in the seed trade, selling Texas registered or certified seed. Persons appointed from the State Colleges and from the State Department of Agriculture shall be deemed to have been given additional ex officio duties by their appointment to membership on the Board. In the event an appointee severs his employment with the department or division from which he was appointed or fails to retain his active business or professional affiliation as a registered or certified seed producer or in the seed trade, his membership on the Board shall automatically terminate and the vacancy shall be filled as hereinafter provided. Members of the Board shall hold office for a term of two (2) years and until their successors are appointed and have qualified, except that in the initial appointments the first three (3) members mentioned above shall serve for a term of two (2) years and the last two (2) for an initial term of one (1) year and a term of two (2) years thereafter. In the event of a vacancy caused by death, resignation, inability or ineligibility to act, or any other cause, the Governor shall appoint a qualified person to complete the unexpired term. The Board shall elect annually one (1) of its members as Chairman, one (1) as Vice-Chairman, and one (1) as Secretary. The Board shall meet at such times and places as the Chairman may order. All applicants for license as a registered or certified seed grower shall furnish such information as the Board may require and shall appear in person before the Board if the Board requests it. The Board shall approve and issue licenses for registered and certified seed growers, promulgate rules and regulations governing the producing of foundation, registered and certified seeds, and prescribe the qualifications and approve appointments of inspectors who may be employed under this law. The Board may, from time to time, appoint persons to act in an advisory capacity on technical matters, but such appointees shall not have a vote as Board members. As amended Acts 1959, 56th Leg., p. 377, ch. 180, § 1.

Emergency. Effective May 19, 1959.

Section 2 of the amendatory Act of 1959 contained a severability clause.

**CHAPTER SEVEN—NURSERY STOCK**

Art.

131a. Importation of camellia plants and flowers [New].

**Article 119. [4458-68] General**

It shall be the duty of the Commissioner of Agriculture to prepare, publish, and enforce suitable rules and regulations for the traffic, growing, shipping, and selling of trees, plants, shrubs, vines, cuttings, grafts, scions, bulbs and grasses grown or kept for, or capable of propagation, distribution or sale, and for such control and inspection as may be required as to cut flowers, potted plants, blooming plants, inside foliage plants, bedding plants, corsage flowers, cut foliage, floral decorations and live decorative material, and he shall also provide such rules and regulations concerning city, private or public parks, avenues of shade trees, shrubbery and ornamentals along the streets of cities, for city residences, and city property generally, as will secure a protection and immunity from insect pests and diseases. He shall inspect, or cause to be inspected at least once each year all nurseries, greenhouses, orchards, gardens, florists or other places growing or offering for sale any or all of the items listed herein, or any other item of plant life of nursery products or cut flower. The inspection or examination shall determine whether or not such item or the premises are infected with diseases or insect pests injurious to human, animal or plant life. If such items and premises are free in all respects from infection or infestation, the Commissioner, upon receipt of inspection fee provided by this Act, and in accordance with this Chapter, shall issue a certificate of inspection. The Commissioner shall enforce the provisions of this Chapter and make and enforce such other rules and regulations not inconsistent herewith as may be deemed necessary to carry the same into effect. As amended Acts 1959, 56th Leg., p. 613, ch. 280, § 1.

Emergency. Effective May 27, 1959.

Section 3A of the amendatory Acts of 1959, provided: "The provisions of this Act shall apply only to nursery growers, nursery dealers, nursery agents and florists as de-

finied in Section 17 [Art. 135] Subsections 2, 3, 4 and 5 of this Act."

Section 18 of the amendatory Act of 1959 contained a severability clause.

**Art. 120. Repealed. Acts 1959, 56th Leg., p. 613, ch. 280, § 2. Eff. May 27, 1959**

Diseased nursery stock, see Vernon's Ann. P.C. art. 1691.

**Art. 121. [4459]. Abatement of nuisance**

If it shall be determined by the Commissioner or his representative that any item or premise inspected shall be diseased or infected with diseases or pests, it shall be his duty to abate as a public nuisance as much thereof as may be necessary, within his judgment, to safeguard the public health and welfare affected thereby. For such purpose, he shall have authority to enter upon any premises so affected for the purpose of legally inspecting and treating or destroying the same, and no damages shall be awarded against the Commissioner or his representative for the exercise of such duties. As amended Acts 1959, 56th Leg., p. 613, ch. 280, § 3.

Emergency. Effective May 27, 1959.

Application of 1959 amendatory Act, see note under art. 119.



## Art. 122. [4459] Notice

If it shall be determined by the Commissioner or his representative that any item of nursery product or stock or florist plant, tree, shrub, or other growth is diseased or infected to such an extent that all or any part thereof shall be destroyed, or should treatment be given in a way and manner directed by said Commissioner or his representative, then, and in that event, the Commissioner or his representative shall deliver in person or by registered or certified mail a written notice naming the item or items of nursery product or stock or florist plant, tree, shrub or growth to be destroyed or treated, and such notice shall contain a brief statement of the facts found to exist and the reason whereby it is necessary to destroy or treat same, this notice to be on a form prescribed by the Commissioner and signed by him or his authorized representative. As amended Acts 1959, 56th Leg., p. 613, ch. 280, § 4.

Emergency. Effective May 27, 1959.

Application of 1959 amendatory Act, see note under art. 119.

## Art. 123. [4459] Treatment or destruction

Any person, firm, corporation or partnership receiving such a notice shall within ten (10) days from the receipt thereof remove or cause to be removed and destroyed or treated as directed by the Commissioner or his representative any diseased item, and failure to do so shall be deemed to be in violation of this Act. As amended Acts 1959, 56th Leg., p. 613, ch. 280, § 5.

Emergency. Effective May 27, 1959.

Application of 1959 amendatory Act, see note under art. 119.

## Art. 124. [4459] Appeal, enforcement of order, rule or regulation; penalty

Any person, firm, corporation or partnership aggrieved by any order, rule, regulation, or notice of the Commissioner or whose property is to be destroyed by any such order, rule, regulation or notice, shall have the right of appeal to any Civil District Court of Travis County, Texas, or to the District Court of the county in which such order, rule, regulation or notice shall affect the applicant, such appeal shall be taken within ten (10) days from and after receipt of such notice or order, and not thereafter. Such appeal shall be heard by said Court in termtime or vacation. If the decision on such appeal shall be against such person, or if such person shall fail or neglect to perfect his appeal in the manner in this Section provided, the order or notice of the Commissioner shall be final and the Commissioner, his agents, or employees, shall summarily execute such notice or order and place such premises in compliance therewith. The sheriff or any constable of any court within this State shall, on request of the Commissioner, his agent, or employee, go upon any premises within this State for the purpose of assisting in the enforcement of such order or notice and placing such premises in compliance therewith. Any person who shall willfully or negligently violate any of the terms and provisions of this Act, or willfully or negligently fail or refuse to comply with any rule, regulation, order, or notice of the Commissioner, issued by said Commissioner pursuant to the duties upon him herein imposed, or the authority to him herein granted, shall, upon conviction, be fined not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200), and each day upon which any person shall maintain any premises

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

within this State in a condition of noncompliance with the provisions of this Act after due notice by registered or certified mail has been given, at the last known address of violator, shall be deemed a separate offense. As amended Acts 1959, 56th Leg., p. 613, ch. 280, § 6.

Emergency. Effective May 27, 1959.

Application of 1959 amendatory Act, see note under art. 119.

#### Art. 125. [4459] Expense of treatment

All charges and expenses of such treatment or destruction of diseased, infected or infectious items or premises shall be paid by such owner or person in charge of said items or premises and shall constitute a legal claim against such owner or person in charge, which may be recovered by suit brought by the Commissioner or the County Attorney of the county where such premises are situated, together with all costs, including attorney's fees. As amended Acts 1959, 56th Leg., p. 613, ch. 280, § 7.

Emergency. Effective May 27, 1959.

Application of 1959 amendatory Act, see note under art. 119.

#### Art. 126. [4460] Examination and certificate

The Commissioner shall inspect or cause to be inspected at least once each year each and every place offering items of nursery products or stock or <sup>45a</sup> greenhouses, orchards, gardens, florists or other places growing any or all of the items listed in this Chapter or any other item of plant life or cut flower and selling or offering same for sale, to ascertain whether or not said item or premises are infected with disease or insect pests injurious to human, animal or plant life. If such item and premises are free in all respects from infection or infestation, the Commissioner shall, upon receipt of the inspection fee provided herein, issue to the owner, manager, or person in control of such item or premises, a certificate, which certificate shall show the date of inspection, the name of the person making such inspection, and the fee charged for such inspection. The certificate shall not be negotiable or transferable, and shall bear an expiration date. Any person offering for sale any item of nursery product or stock or florist item without a certificate of inspection as herein provided shall be deemed to be in violation of this Act. As amended Acts 1959, 56th Leg., p. 613, ch. 280, § 8.

Emergency. Effective May 27, 1959.

Application of 1959 amendatory Act, see note under art. 119.

#### Art. 127. [4461] Certificate to accompany sale or shipment

All items of nursery products or stock or florist items offered for sale or consigned for shipment, or shipped by freight, express or other means of transportation, shall be accompanied by a copy of the certificate of inspection from the Commissioner of Agriculture attached to each car, box, bale, package or item. When such car, box, bale, package or item shall be delivered to more than one person, firm, corporation, or partnership, each portion shall also bear a copy of the certificate of inspection issued as provided in this Chapter. As amended Acts 1959, 56th Leg., p. 613, ch. 280, § 9.

Emergency. Effective May 27, 1959.

Application of 1959 amendatory Act, see note under art. 119.

**Art. 128. [4462] Nursery stock shipped into State**

No person, firm, corporation or partnership outside this State shall be permitted to ship nursery products or stock or florist items into this State without having first filed with the Commissioner of Agriculture a certified copy of his, or their, certificate of inspection, issued by the proper authorities in the State from which the shipment originates. Such certificate shall show that the stock to be shipped has been examined by the proper officers of inspection in such State, and that it is apparently free from all dangerous insect pests or contagious diseases, and when fumigation or other special treatment is required by the Commissioner of Agriculture, that the stock has been properly fumigated or treated. Upon receipt of such certificate, and provided that such certificate shall be acceptable to the Commissioner and approved by him, the Commissioner shall issue to such applicant, upon payment of the fee herein provided, a Texas Importation Certificate which shall permit the applicant to ship the nursery products, stock or florist item into the State of Texas. Each car, box, bale or package of nursery products, stock or florist item from outside the State of Texas shall bear a tag on which is printed a copy of the certificate of this State, and also a copy of the certificate of the State in which it originates. As amended Acts 1959, 56th Leg., p. 613, ch. 280, § 10.

Emergency. Effective May 27, 1959.

Application of 1959 amendatory Act, see note under art. 119.

**Art. 129. [4464] May revoke certificate**

The Commissioner may revoke any certificate of inspection issued under this Chapter when he finds that false representations have been made by the party to whom the same was issued, or when such party violates or refuses to comply with any law, instructions or rules given by the Commissioner as authorized by this Chapter. As amended Acts 1959, 56th Leg., p. 613, ch. 280, § 11.

Emergency. Effective May 27, 1959.

Application of 1959 amendatory Act, see note under art. 119.

**Art. 130. [4463] Transportation companies not liable**

No transportation company or common carrier shall be liable for damages to the consignee or consignor for refusing to receive for transportation or deliver nursery products, stock, or florist items in packages, bales, bundles or boxes when not accompanied by copies of the certificates provided for in this Chapter. The agent of any such company or carrier shall immediately report to the Commissioner of Agriculture any such shipment not so accompanied. As amended Acts 1959, 56th Leg., p. 613, ch. 280, § 12.

Emergency. Effective May 27, 1959.

Application of 1959 amendatory Act, see note under art. 119.

**Art. 131. [4463] Unlawful shipments**

The Commissioner shall inspect shipments of nursery products, stocks or florist items into this State, or originating within this State, and if found without tags or proper certificates as above provided for, the same shall be dealt with as infected stock, and destroyed or disposed of at the direction of the Commissioner or his representative. Any

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

moneys received from the sale of said items shall be treated as fees of officer and deposited in the State Treasury. As amended Acts 1959, 56th Leg., p. 613, ch. 280, § 13.

Emergency. Effective May 27, 1959.

Application of 1959 amendatory Act, see note under art. 119.

#### Art. 131a. Importation of camellia plants and flowers

Section 1. No balled or potted camellia plants with soil attached, cut camellia flowers, or camellia plants with flower buds showing color, may be imported into the State of Texas unless such plants or flowers are accompanied by a certificate from the appropriate official of the state of origin certifying that such plants or flowers are free from camellia flower blight (*Sclerotinia camelliae*).

Sec. 1a. The Commissioner of Agriculture shall have authority to prepare and enforce suitable rules and regulations for the sale and shipment of camellias and other products in the control of camellia flower blight (*Sclerotinia camelliae*) within the State of Texas.

Sec. 2. Camellia plants or flowers imported into the State of Texas without a certificate from the appropriate official of the state of origin certifying that such plants or flowers are free of camellia flower blight (*Sclerotinia camelliae*) must be destroyed or returned to the point of origin at the discretion of the Commissioner of Agriculture.

Sec. 3. Any person, firm, association, corporation, or other legal entity, who shall violate Section 1 of this Act shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not more than One Hundred Dollars (\$100), and each separate camellia plant or flower imported into the State of Texas in contravention of Section 1 of this Act shall be considered as a separate offense.

Sec. 4. The provisions of this Act shall be cumulative of all laws relating to this subject. Acts 1959, 56th Leg., p. 865, ch. 391.

Emergency. Effective May 30, 1959.

Delivery of infested or diseased plants, see Vernon's Ann.P.C. art. 1699.

Title of Act:

An Act regulating the importation of camellia plants and flowers into the State

of Texas; providing a penalty; making the Act cumulative; and declaring an emergency. Acts 1959, 56th Leg., p. 865, ch. 391.

#### Art. 132. [4465] Chief inspector

The Commissioner shall appoint one person who shall be designated as Chief Inspector who shall act for and on behalf of the Commissioner and under his direction and supervision, and who shall inspect or cause to be inspected, all places growing nursery products, stocks, or florist items, or in any manner handling nursery products, stocks or florist items for sale, and shall inspect or cause to be inspected, the premises or areas where any or all of the products, stocks or items coming within the purview of this Chapter are displayed or offered for sale. As amended Acts 1959, 56th Leg., p. 613, ch. 280, § 14.

Emergency. Effective May 27, 1959.

Application of 1959 amendatory Act, see note under art. 119.

#### Art. 133. [4465] Inspection fees

The Commissioner shall collect or cause to be collected all fees of inspection, and he shall fix said fee based upon his knowledge and experi-

ence, and shall publish a schedule of said fees in connection with and as a part of the rules and regulations as provided herein. The fee for each inspection of an installation, premise or area growing, buying, selling, displaying or in any manner handling nursery products or stocks shall be not less than Ten Dollars (\$10) nor more than Twenty-five Dollars (\$25). The fee for each inspection of an installation, premise or area where florist items are bought and sold or offered for sale shall be not less than Five Dollars (\$5) nor more than Fifteen Dollars (\$15). The fee for each inspection of nursery products, stocks or florist items shipped into the State, and requiring an importation certificate may be fixed by the Commissioner. All fees collected shall be accounted for in a manner and method as shall be determined by the State Auditor, and such fees shall be deposited with the State Treasurer in the same manner as other fees of office of the Commissioner of Agriculture. As amended Acts 1959, 56th Leg., p. 613, ch. 280, § 15.

Emergency. Effective May 27, 1959.

Application of 1959 amendatory Act, see note under art. 119.

Art. 134. Repealed. Acts 1959, 56th Leg., p. 613, ch. 280, § 16. Eff. May 27, 1959

#### Art. 135. [4467] Definitions

The following definitions shall apply to the various categories and individuals coming within the provisions of Chapter 7 of the Revised Civil Statutes of Texas, 1925, and the amendments thereto:

1. Nursery Products and Nursery Stock—The terms “nursery products” and “nursery stock” within the meaning of this law shall include all trees, shrubs, vines, cuttings, grafts, scions, grasses, bulbs and buds grown or kept for, or capable of, propagation, distribution or sale.

2. Nursery Grower—The term “nursery grower” shall be construed to mean any person, firm, partnership or corporation growing nursery products or nursery stock for the purpose of sale, who actually grow more than fifty per cent (50%) of the nursery products and nursery stock sold by or under the direction of said person, firm, partnership or corporation, regardless of the variety of nursery products or nursery stock sold or grown.

3. Nursery Dealer—The term “nursery dealer” shall be construed to mean any person, firm, partnership or corporation who buy and sell or offer for sale nursery products and/or nursery stock and who has facilities that maintain or preserve said nursery products and nursery stock without permitting same to become dry or infested or diseased, and provided said nursery dealer shall have an established permanent address, which address shall be registered with the Commissioner of Agriculture and which address shall be imprinted upon the certificate and all copies of the certificate issued to said nursery dealer by the Commissioner of Agriculture.

4. Nursery Agent—The term “nursery agent” shall be construed to mean any person, firm, partnership or corporation selling nursery products or nursery stock or taking mail orders or in any manner selling or offering for sale nursery products and nursery stock, either as being entirely under the control of a nursery grower or nursery dealer, with whom the nursery products or nursery stock offered for barter and traffic originates, or some co-operative basis for handling nursery products or nursery stock with the nursery grower or nursery dealer as hereinbefore defined.

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

Any such nursery agent shall have proper credentials from the nursery grower or nursery dealer he represents or co-operates with, and failing in that, any such nursery agent shall be classed as a nursery dealer, and subject to such rules and regulations as may be adopted relative to them, and shall be amenable to the same penalties for violation of any provisions of this law.

5. Florist—The term "florist" shall be construed to mean any person, firm, partnership or corporation who maintains, grows, raises, or buys and offers for sale for profit, cut flowers, potted plants, blooming plants, inside foliage plants, bedding plants, corsage flowers, cut foliage, floral decorations and live decorative material. As amended Acts 1959, 56th Leg., p. 613, ch. 280, § 17.

Emergency. Effective May 27, 1959.

Application of 1959 amendatory Act, see note under art. 119.

## CHAPTER NINE—SOIL CONSERVATION AND PRESERVATION

### Art. 165a—4. State Soil Conservation Law

#### Creation of Soil Conservation Districts

##### Sec. 5.

H. Petitions for including additional territory within an existing District may be filed with the State Soil Conservation Board, and the proceedings provided for herein in the case of petitions to organize a District shall be observed in the case of petitions for such inclusion. The Board shall prescribe the form for such petitions, which shall be as nearly as may be in the form prescribed in this Act for petitions to organize a District. Where the total number of landowners in the area proposed for inclusion shall be less than one hundred (100), the petition may be filed when signed by a two-thirds majority of owners of land in such area, and in such case no election need be held. In election upon petitions for such inclusion, all owners of land within the proposed additional area shall be eligible to vote; only such landowners shall be eligible to vote.

Petitions for withdrawing territory from one duly organized Soil Conservation District and including such territory in an adjoining Soil Conservation District may be filed with the State Soil Conservation Board. Such petitions shall clearly define the territory involved. Proceedings provided for herein in the case of petitions to organize a District shall be observed in the case of petitions for withdrawing territory from one Soil Conservation District and for inclusion of such territory within an adjoining Soil Conservation District. Where the total number of landowners in the area proposed to be withdrawn from one Soil Conservation District and included within an adjoining Soil Conservation District shall be less than one hundred (100), the petition may be filed when signed by a two-thirds majority of owners of land in such area, and in such case no election need be held. In elections in the case of petitions concerning territory containing more than one hundred (100) landowners, only the owners of land within the area included in the petition who are residents of either of the Districts involved shall be eligible to vote. Following receipt of a proper petition and the conduct of required hearing and election, the State Soil Conservation Board shall thereafter consider and determine whether the withdrawal of the territory from the original Soil Conservation District and inclusion in the adjoining Soil Conservation District is practica-

ble and feasible. In no case shall the State Soil Conservation Board determine that the withdrawal of an area from one Soil Conservation District and inclusion in an adjoining Soil Conservation District is practicable and feasible unless in the affected area, if there are less than one hundred (100) landowners, two-thirds of the landowners shall have signed the petition or unless, in the affected area if there are more than one hundred (100) landowners, two-thirds of the landowners voting shall have voted for the withdrawal and inclusion; and, in either case, unless it also has in hand a duly executed Resolution from each of the Soil Conservation District Boards of Supervisors affected stating that withdrawal and inclusion of the area is in the best interest of the people within the area and the affected Soil Conservation Districts. As amended Acts 1959, 56th Leg., p. 743, ch. 337, § 1.

Emergency. Effective May 30, 1959.

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

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

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

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

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

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

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

(6) To develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion within the District, which plans shall specify in such detail as may be possible, the acts, procedures, performances, and avoidances which are necessary or de-

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

sirable for the effectuation of such plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in use of land; and to publish such plans and information and bring them to the attention of occupiers of lands within the District;

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

(8) To sue and be sued in the name of the District; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments, necessary or convenient to the exercise of its powers, to make, and from time to time amend and repeal, rules and regulations not inconsistent with this Act, to carry into effect its purposes and powers;

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

(10) The supervisors shall have no power to levy taxes, and no debts incurred in the name of the District shall create a lien on lands of landowners or land occupiers in the District.

(11) (a) The supervisors may execute notes on the faith and credit of the District payable from current funds or revenues within reasonable contemplation, or both, but none of which moneys shall be derived from the State, for the purpose of making repairs, additions and improvements to any property and equipment owned by the District. Such note shall mature not later than twelve (12) months from its date, and may bear interest not to exceed six percent (6%) per annum.

(b) Any such note or notes may be secured by a lien on the property or equipment to which such repairs, additions or improvements are to be made, provided such property or equipment was not acquired from the State nor with moneys derived from the State. As amended Acts 1959, 56th Leg., p. 944, ch. 439, § 1.

Emergency. Effective May 30, 1959.  
Section 2 of the amendatory Act of 1959 contained a severability clause.



**CHAPTER ELEVEN—COTTON**

**Art. 165—4a.** Agricultural agencies to stress increased use and outlet of products; cotton research committee

**Sec. 2.** A Cotton Research Committee, composed of the Chancellor or Successor of the Texas Agricultural and Mechanical College System and the Chancellor or Successor of The University of Texas, the President of the Texas Technological College, and the President of Texas Woman's University, is hereby created and established to cause surveys, research and investigations to be made relating to the utilization of the cotton fiber, cottonseed, and all other products of the cotton plant, with authority to contract with any and all Agricultural Agencies and Departments of the state, and all State Educational Institutions and State Agencies to perform any such services for said Committee and for the use of their respective available facilities, as it may deem proper, and to compensate such Agencies, Departments and Institutions, to be paid from money appropriated by the Legislature for the purposes of this Act, which appropriations of monies for cotton research are hereby authorized; grants and gifts from the United States or private sources may be accepted for such purposes, and shall be subject only to limitations contained in such grants or gifts. As amended Acts 1959, 56th Leg., p. 724, ch. 329, § 1.

Emergency. Effective May 30, 1959.

**CHAPTER FIFTEEN—CHICKEN EGGS**

**Art. 165—8.** Handling and sale of chicken eggs

**Containers for eggs; requirements**

**Sec. 9.** All containers in which eggs for human consumption are offered for sale to food purveyors or consumers must:

(a) be labeled according to size and grade in distinctly legible bold face type not less than one-fourth ( $\frac{1}{4}$ ) inch in height;

(b) not be deceptively labeled, advertised, or invoiced;

(c) state the name of either the dealer, retailer, food purveyor, or agent by or for whom the eggs were graded and labeled;

(d) not be advertised in a manner which indicated price without also indicating the full, correct and unabbreviated designation of size and grade of eggs therein;

(e) not be labeled "fresh" if the eggs offered for sale have been held under refrigeration for a period of sixty (60) days or more. These eggs which are held sixty (60) days or more shall not be labeled "AA" or "A."

In the case of eggs offered for sale uncartoned, a sign showing the proper designation of size and grade must be clearly displayed attached to the container. This sign must be distinctly legible in letters at least one (1) inch high. As amended Acts 1959, 56th Leg., p. 741, ch. 335, § 1.

Effective 90 days after May 12, 1959, date of adjournment.

## TITLE 7—ANIMALS

## 2. DESTRUCTION OF ANIMALS

Art.

190d—1. Wolf bounties in Panola county  
[New].

Art.

190j. Bounties on rabbits in Borden County.  
[New].

## 2. DESTRUCTION OF ANIMALS

## Art. 190d—1. Wolf bounties in Panola county

The Commissioners Court of Panola County, in order to preserve game, is hereby authorized to pay out of the General County Fund bounties on wolves killed in the County at not to exceed Twenty-five Dollars (\$25) for each wolf killed. Said Commissioners Court may require such proof and adopt such rules and regulations as are necessary in order to protect the interest of the County and make assurance that one animal has been killed for each wolf paid for. Acts 1959, 56th Leg., p. 561, ch. 251, § 1.

Emergency. Effective May 26, 1959.

Title of Act:

An Act granting the Commissioners Court of Panola County the privilege of paying

bounties on wolves killed in the County at not to exceed Twenty-five Dollars (\$25) for each wolf; and declaring an emergency.

## Art. 190j. Bounties on rabbits in Borden County

The Commissioners Court of Borden County, in order to prevent property damage, is hereby authorized to pay out of the General County Fund bounties on wild rabbits killed in the County at not to exceed Ten Cents (10¢) for each wild rabbit killed. Said Commissioners Court may require such proof and adopt such rules and regulations as are necessary in order to protect the interest of the County and make assurance that one (1) animal has been killed for each rabbit paid for. Acts 1959, 56th Leg., p. 580, ch. 263, § 1.

Emergency. Effective May 26, 1959.

Title of Act:

An Act granting the Commissioners Court of Borden County the privilege of paying

bounties on wild rabbits killed in the County at not to exceed Ten Cents (10¢) for each rabbit; and declaring an emergency. Acts 1959, 56th Leg., p. 580, ch. 263.

TITLE 8—APPORTIONMENT  
TABLE

Showing the Districts to which each county is allocated.

	Senatorial District.	Representative District.	Congressional District.	Judicial District.	Sup. Judicial District.	Administrative Judicial District.
Anderson	11	27	7	3, 87	1	1
Andrews	28	99	19	109	8	7
Angelina	3	18	7	2, 145	9	1
Aransas	18	35	14	36, 156	4	4
Archer	23	71	13	97	2	8
Armstrong	30	94F	18	47	7	9
Atascosa	19	69	14	81	4	4
Austin	15	45	9	22, 155	1	3
Bailey	30	96	19	154	7	9
Bandera	16	78	21	38	4	6
Bastrop	14	57	10	21	3	2
Baylor	23	83	13	50	11	9
Bee	18	58	14	36, 156	4	4
Bell	13	63	11	27	3	3
Bexar	26	68	20	37, 45, 57, 73, 131, 150	4	4
Blanco	19	66	10	33	3	3
Borden	24	90	19	132	11	7
Bosque	12	62	11	52	10	3
Bowie	1	1	1	5, 102	6	1
Brazoria	17	23	9	23, 130	1	2
Brazos	11	44	6	85	10	2
Brewster	25	100	16	83	8	6
Briscoe	30	89	18	110	7	9
Brooks	21	70	14	79	4	5
Brown	16	73	21	35	11	7
Burleson	11	57	10	21	1	2
Burnet	16	74	10	33	3	3
Caldwell	19	66	10	22, 155	3	3
Calhoun	18	33	9	24, 135	4	4
Callahan	22	76	17	42	11	7
Cameron	27	39, 40F	15	103, 107, 138	4	5
Camp	7	3	3	76	6	1
Carson	31	94F	18	100	7	9
Cass	1	2	1	5	6	1
Castro	30	96	18	64	7	9
Chambers	17	20	9	75	1	2
Cherokee	3	17	7	2, 145	6	1
Childress	30	88	18	100	7	9
Clay	22	71	13	97	2	8
Cochran	28	98	19	72	7	9
Coke	25	77	21	51	3	7
Coleman	25	77	21	35, 119	11	7
Collin	9	50	4	15, 59	5	1
Collingsworth	30	87	18	100	7	9
Colorado	15	46	9	25	1	3
Comal	19	67	14	22, 155	3	3
Comanche	12	73	17	52	11	3
Concho	16	77	21	119	3	7
Cooke	9	49F	13	16	2	8

## APPORTIONMENT

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

	Senatorial District.	Representative District.	Congressional District.	Judicial District.	Sup. Judicial District.	Administrative Judicial District.
Coryell -----	12	62	11	52	10	3
Cottle -----	23	82	18	50	7	9
Crane -----	23	102	16	109	8	7
Crockett -----	25	78	16	112	8	6
Crosby -----	28	90	19	72	7	9
Culberson -----	29	104	16	34, 41, 65	8	6
Dallam -----	31	95	18	69	7	9
Dallas -----	8	51	5	14, 44, 68, 95, 101, 116, 134, 160	5	1
Dawson -----	28	99	19	106	11	7
Deaf Smith -----	30	96	18	69	7	9
Delta -----	1	11	1	8, 62	6	1
Denton -----	22	59	13	16	2	8
DeWitt -----	18	34	14	24	4	4
Dickens -----	24	85	19	110	7	9
Dimmit -----	21	79	15	49	4	4
Donley -----	30	88	18	100	7	9
Duval -----	21	70	14	79	4	5
Eastland -----	22	76	17	91	11	8
Ector -----	29	103	16	70	8	7
Edwards -----	25	78	21	63	4	6
Ellis -----	12	52	6	40	10	1
El Paso -----	29	105	16	34, 41, 65, 120	8	6
Erath -----	12	62	17	29	11	8
Falls -----	11	55	11	82	10	3
Fannin -----	9	24	4	6	6	1
Fayette -----	15	46	9	22, 155	3	3
Fisher -----	24	91	17	104	11	7
Floyd -----	30	89	19	110	7	9
Foard -----	23	82	13	46	7	9
Fort Bend -----	17	30	9	23, 130	1	2
Franklin -----	1	11	1	62, 76	6	1
Freestone -----	11	43	6	77, 87	10	2
Frio -----	19	69	15	81	4	4
Gaines -----	23	99	19	106	8	7
Galveston -----	17	21	9	10, 122	1	2
Garza -----	24	90	19	106	7	7
Gillespie -----	16	74	21	33	4	3
Glasscock -----	25	101	16	118	8	7
Goliad -----	18	34	9	24, 135	4	4
Gonzales -----	19	47	14	25	4	3
Gray -----	31	87	18	31	7	9
Grayson -----	9	48, 49F	4	15, 59	5	1
Gregg -----	2	13, 15F	3	71, 124	6	1
Grimes -----	5	29	7	12	1	2
Guadalupe -----	19	67	14	25	4	3
Hale -----	30	89	19	64	7	9
Hall -----	30	88	18	100	7	9
Hamilton -----	12	62	17	52	10	3
Hansford -----	31	95	18	84	7	9
Hardeman -----	23	82	13	46	7	9
Hardin -----	3	19	2	88	9	2

REVISED CIVIL STATUTES

	Senatorial District.	Representative District.	Congressional District.	Judicial District.	Sup. Judicial District.	Administrative Judicial District.
Harris -----	6	22	8, 22	11, 55, 61, 80, 113, 125, 127, 129, 133, 151, 152, 157	1	2
Harrison -----	2	4	1	71	6	1
Hartley -----	31	95	18	69	7	9
Haskell -----	23	83	13	39	11	7
Hays -----	19	66	10	22, 155	3	3
Hemphill -----	31	86	18	31	7	9
Henderson -----	6	26	7	3	5	1
Hidalgo -----	27	38	15	92, 93, 139	4	5
Hill -----	12	54	6	66	10	3
Hockley -----	28	98	19	72	7	9
Hood -----	12	61	6	29	2	8
Hopkins -----	1	11	1	8, 62	6	1
Houston -----	5	28	7	3	1	1
Howard -----	24	101	19	118	11	7
Hudspeth -----	29	104	16	34, 41, 65	8	6
Hunt -----	9	25	4	8, 62	5, 6	1
Hutchinson -----	31	86	18	84	7	9
Irion -----	25	101	21	51	3	7
Jack -----	22	72	13	43	2	8
Jackson -----	18	32	9	24, 135	1	4
Jasper -----	3	7	2	1	9	2
Jefferson -----	4	9	2	58, 60, 136	9	2
Jeff Davis -----	25	104	16	83	8	6
Jim Hogg -----	21	70	15	49	4	4
Jim Wells -----	21	70	14	79	4	5
Johnson -----	12	61	6	18	10	3
Jones -----	24	85	17	104	11	7
Karnes -----	18	58	14	81	4	4
Kaufman -----	7	41	4	86	5	1
Kendall -----	19	67	21	38	4	6
Kenedy -----	20	37 <sup>F</sup>	14	28, 105	4	5
Kent -----	24	90	13	39	7	7
Kerr -----	16	78	21	38	4	6
Kimble -----	16	78	21	38	4	3
King -----	23	85	13	50	7	9
Kinney -----	16	100	21	63	4	6
Kleberg -----	20	37 <sup>F</sup>	14	28, 105	4	5
Knox -----	23	83	13	50	11	9
Lamar -----	1	10	1	6, 62	6	1
Lamb -----	30	96	19	154	7	9
Lampasas -----	16	74	21	27	3	3
La Salle -----	21	69	15	81	4	4
Lavaca -----	15	47	9	25	1	3
Lee -----	15	57	10	21	3	2
Leon -----	5	43	6	12, 87	10	2
Liberty -----	5	20	2	75	9	2
Limestone -----	11	55	6	77, 87	10	2
Lipscomb -----	31	86	18	31	7	9
Live Oak -----	18	69	14	36, 156	4	4
Llano -----	16	74	21	33	3	3
Loving -----	29	104	16	143	8	7
Lubbock -----	28	97	19	72, 99, 140	7	9

## APPORTIONMENT

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

	Senatorial District.	Representative District.	Congressional District.	Judicial District.	Sup. Judicial District.	Administrative Judicial District
Lynn	28	99	19	106	7	7
Madison	5	43	7	12	10	2
Marion	1	2	1	76	6	1
Martin	28	101	19	118	8	7
Mason	16	78	21	33	4	3
Matagorda	17	32	9	23, 130	1	2
Maverick	21	100	15	63	4	6
McCulloch	16	74	21	35	3	7
McLennan	13	53	11	19, 54, 74	10	3
McMullen	18	69	14	36, 156	4	4
Medina	19	79	15	38	4	6
Menard	16	78	21	33	4	3
Midland	29	102	16	70, 142	8	7
Milam	13	56	11	20	3	3
Mills	16	73	21	27	3	3
Mitchell	24	91	19	32	11	7
Montague	22	71	13	97	2	8
Montgomery	5	29	7	9	9	2
Moore	31	95	18	69	7	9
Morris	1	2	1	76	6	1
Motley	30	88	18	110	7	9
Nacogdoches	3	6	7	2, 145	9	1
Navarro	11	42	6	13	10	3
Newton	3	7	2	1	9	2
Nolan	24	91	17	32	11	7
Nueces	20	36, 37F	14	28, 94,	4	5
				105, 117		
Ochiltree	31	86	18	84	7	9
Oldham	31	95	18	69	7	9
Orange	4	8	2	128	9	2
Palo Pinto	22	75	17	29	11	8
Panola	2	5	3	123	6	1
Parker	22	72	17	43	2	8
Parmer	30	96	18	154	7	9
Pecos	25	102	16	83, 112	8	6
Polk	5	19	7	9	9	2
Potter	31	93, 94F	18	47, 108	7	9
Presidio	25	104	16	83	8	6
Rains	9	26	4	8	6	1
Randall	31	94F	18	47	7	9
Reagan	25	101	16	83	8	6
Real	16	78	21	38	4	6
Red River	1	3	1	102	6	1
Reeves	29	104	16	143	8	7
Refugio	18	35	14	24, 135	4	4
Roberts	31	86	18	31	7	9
Robertson	11	56	6	85	10	2
Rockwall	9	41	4	86	5	*
Runnels	25	77	21	119	3	7
Rusk	2	16	3	4	6	1
Sabine	3	6	2	1	9	2
San Augustine	3	6	2	1	9	2
San Jacinto	5	19	7	9	9	2
San Patricio	18	35	14	36, 156	4	4

\* Omitted in enumerating counties in the first district.

REVISED CIVIL STATUTES

	Senatorial District.	Representative District.	Congressional District.	Judicial District.	Sup. Judicial District.	Administrative Judicial District.
San Saba	16	74	21	33	3	3
Schleicher	25	78	21	51	3	7
Scurry	24	90	17	132	11	7
Shackelford	24	76	17	42	11	7
Shelby	2	5	3	123	9	1
Sherman	31	95	18	69	7	9
Smith	7	14, 15 <sup>F</sup>	3	7, 114	6	1
Somervell	12	61	6	18	10	3
Starr	21	70	15	79	4	5
Stephens	22	75	17	90	11	8
Sterling	25	101	21	51	3	7
Stonewall	24	85	13	39	11	7
Sutton	25	78	21	112	4	6
Swisher	30	89	18	64	7	9
Tarrant	10	60	12	17, 48, 67, 96, 153	2	8
Taylor	24	84	17	42, 104	11	7
Terrell	25	100	16	63	8	6
Terry	28	98	19	106	7	7
Throckmorton	23	83	13	39	11	7
Titus	1	3	1	76	6	1
Tom Green	25	92	21	51, 119	3	7
Travis	14	65	10	53, 98, 126	3	3
Trinity	5	18	7	9, 12	1	2
Tyler	3	7	2	88	9	2
Upshur	7	12	3	115	6	1
Upton	25	102	16	83, 112	8	6
Uvalde	16	79	21	38	4	6
Val Verde	25	100	21	63	4	6
Van Zandt	7	26	3	86	5	1
Victoria	18	33	9	24, 135	4	4
Walker	5	28	7	12	1	2
Waller	15	30	9	9	1	2
Ward	29	103	16	143	8	7
Washington	11	45	10	21	1	2
Webb	21	80	15	49, 111	4	4
Wharton	15	31	9	23, 130	1	2
Wheeler	31	87	18	31	7	9
Wichita	23	81	13	30, 78	2	8
Wilbarger	23	82	13	46	7	9
Willacy	20	40 <sup>F</sup>	15	103, 107, 738	4	5
Williamson	14	64	10	26	3	3
Wilson	19	58	14	81	4	4
Winkler	29	103	16	109	8	7
Wise	22	72	13	43	2	8
Wood	7	12	3	114, 115	6	1
Yoakum	28	98	19	106	7	7
Young	23	75	13	90	2	8
Zapata	21	80	15	49	4	4
Zavala	16	79	15	38	4	6

## JUDICIAL DISTRICTS

Particular criminal district courts, see  
Vernon's Ann.C.C.P. art. 52 et seq.

## Art. 199. [30] [22] [17] Judicial Districts

## 1. — Newton, Jasper, Sabine and San Augustine

County courts, jurisdiction of misdemeanors, see Vernon's Ann.C.C.P. art. 52—88.

## 2. — Angelina, Cherokee and Nacogdoches

County courts, jurisdiction of misdemeanors, see Vernon's Ann.C.C.P. art. 52—88.

## 10, 56. — Galveston County

The terms of the 10th and the 56th Judicial Districts, which shall be composed of Galveston County, shall be held therein as follows:

On the first Monday in February, April, June, October and December and may continue until the business is disposed of.

In all suits, actions or proceedings, it shall be sufficient for the address or designation to be merely the "District Court of Galveston County." The District Clerk of Galveston County shall docket successively on the dockets of the District Courts of the 10th, 56th and 122nd Judicial Districts in Galveston County all civil cases, actions, causes, petitions, applications, or other civil proceedings so that the first case or proceeding filed on or after the effective date of this Act and every third such case or proceeding thereafter filed shall be docketed in the 10th Judicial District; and the second case or proceeding filed on or after the effective date of this Act and every third such case or proceeding thereafter filed shall be docketed in the 56th Judicial District; and the third case or proceeding filed on or after the effective date of this Act and every third such case or proceeding thereafter filed shall be docketed in the 122nd Judicial District; and so on seriatim and in this manner all cases or proceedings filed shall be docketed in and divided equally among said three (3) Courts, one third ( $\frac{1}{3}$ ) in each Court. Any case pending in either of said Courts may, at the discretion of the Judge thereof, be transferred from one (1) of said District Courts to the other, and so from time to time.

In event of the absence, sickness or disqualification of a Judge of any of such District Courts, any of the other Judges of the District Courts of Galveston County may act and preside over the Court of said Judge during his said absence, sickness or disqualification.

The Clerk of the District Court of said County, also known as the District Clerk of Galveston County, shall perform the duties of the Clerk of each of said three (3) District Courts. Vacancies in the office of said Clerk shall be filled as provided by general law. As amended Acts 1959, 56th Leg., p. 949, ch. 441, § 1.

Emergency. Effective May 30, 1959.

11, 55, 61, 80, 113, 125, 127, 129, 133, 151, 152, 157—Harris; Criminal District Court of Harris County; Criminal District Court of Harris County Nos. 2, 3, 4 and 5

11th, 55th, 61st, 80th, 113th, 125th, 127th, 129th, 133rd, 151st, 152nd, 157th Judicial District Courts and the Criminal District Court of Harris



County, Criminal District Court No. 2 of Harris County, Criminal District Court No. 3 of Harris County, Criminal District Court No. 4 of Harris County and Criminal District Court No. 5 of Harris County, Texas.

There is hereby created and established the Criminal Judicial District of Harris County, Texas, the Criminal Judicial District No. 2 of Harris County, Texas, the Criminal Judicial District No. 3 of Harris County, Texas, the Criminal Judicial District No. 4 of Harris County, Texas, and the Criminal Judicial District No. 5 of Harris County, Texas, all to be composed of Harris County alone and the Criminal District Court of Harris County, Texas, shall have and exercise jurisdiction of the Criminal Judicial District of Harris County, Texas; the Criminal District Court No. 2 of Harris County, Texas, shall have and exercise jurisdiction of the Criminal Judicial District No. 2 of Harris County, Texas; the Criminal District Court No. 3 of Harris County, Texas, shall have and exercise jurisdiction of the Criminal Judicial District No. 3 of Harris County, Texas; the Criminal District Court No. 4 of Harris County, Texas, shall have and exercise jurisdiction of the Criminal Judicial District No. 4 of Harris County, Texas; and the Criminal District Court No. 5 of Harris County, Texas, shall have and exercise jurisdiction of the Criminal Judicial District No. 5 of Harris County, Texas, as are now conferred and to be conferred by law on said Criminal District Courts.

Harris County shall constitute the 11th, 55th, 61st, 80th, 113th, 125th, 127th, 129th, 133rd, 151st, 152nd, 157th Judicial District and the Criminal Judicial District of Harris County, Texas; the Criminal Judicial District No. 2 of Harris County, Texas; the Criminal Judicial District No. 3 of Harris County, Texas; the Criminal Judicial District No. 4 of Harris County, Texas; and the Criminal Judicial District No. 5 of Harris County, Texas. Each of said District Courts shall have and exercise civil and criminal jurisdiction in Harris County. The said District Courts of the 11th, 55th, 61st, 80th, 113th, 125th, 127th, 129th, 133rd, 151st, 152nd, 157th, Judicial Districts and the Criminal District Court of Harris County, Texas, of the Criminal Judicial District of Harris County, Texas; the Criminal District Court No. 2 of Harris County, Texas, of the Criminal Judicial District No. 2 of Harris County, Texas; the Criminal District Court No. 3 of Harris County, Texas, of the Criminal Judicial District No. 3 of Harris County, Texas; the Criminal District Court No. 4 of Harris County, Texas, of the Criminal Judicial District No. 4 of Harris County, Texas; and the Criminal District Court No. 5 of Harris County, Texas, of the Criminal Judicial District No. 5 of Harris County, Texas, shall have and exercise, in addition to the jurisdiction now conferred by law on said Courts, concurrent jurisdiction coextensive with the limits of Harris County in all actions, proceedings, matters and causes, both civil and criminal, of which District Courts of general jurisdiction are given jurisdiction by the Constitution and laws of the State of Texas.

The present Judges of said Courts named herein shall continue as Judges of said Courts as constituted and defined by this Act, and the tenure of office of said Judges shall remain the same as is now provided by law.

The terms of the said Courts named herein shall continue and remain the same as now provided by law. The practice and procedure in said Courts shall be the same as now provided by law and, in civil actions, as also provided by the Texas Rules of Civil Procedure applicable to District Courts having successive terms.

The letters A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, and Q shall be placed on the dockets and Court papers of the respective District Courts of Harris County to distinguish them: "A" being used in con-

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

nection with the 11th District Court, "B" being used in connection with the 55th District Court, "C" being used in connection with 61st District Court, "D" being used in connection with the 80th District Court, "E" being used in connection with the 113th District Court, "F" being used in connection with the 125th District Court, "G" being used in connection with the 127th District Court, "H" being used in connection with the 129th District Court, "I" being used in connection with the 133rd District Court, "J" being used in connection with the 151st District Court, "K" being used in connection with the 152nd District Court, "L" being used in connection with the 157th District Court, "M" being used in connection with the said Criminal District Court of Harris County, "N" being used in connection with the said Criminal District Court No. 2 of Harris County, "O" being used in connection with the said Criminal District Court No. 3 of Harris County, "P" being used in connection with the said Criminal District Court No. 4 of Harris County, and "Q" being used in connection with the said Criminal District Court No. 5. All cases in said Criminal District Courts prior to the passage of this Act shall retain the same numbers and letter designations heretofore assigned to said cases.

All indictments shall be returned to the Criminal District Court of Harris County, Texas; the Criminal District Court No. 2 of Harris County, Texas; the Criminal District Court No. 3 of Harris County, Texas; the Criminal District Court No. 4 of Harris County, Texas; and the Criminal District Court No. 5 of Harris County, Texas, and in all civil cases, actions, causes, petitions, applications or other proceedings the District Clerk of Harris County shall docket successively on the dockets of the District Courts of the 11th, 55th, 61st, 80th, 113th, 125th, 127th, 129th, 133rd, 151st, 152nd, 157th Judicial District Courts in Harris County so that the first case or proceeding filed after the effective date of this Act and every twelfth case or proceeding thereafter filed shall be docketed in the 11th District Court; the second case or proceeding filed and every twelfth case thereafter filed shall be docketed in the 55th District Court; the third case or proceeding and every twelfth case or proceeding thereafter filed shall be docketed in the 61st District Court; the fourth case or proceeding and every twelfth case or proceeding thereafter filed shall be docketed in the 80th District Court; the fifth case or proceeding and every twelfth case or proceeding thereafter filed shall be docketed in the 113th District Court; the sixth case or proceeding and every twelfth case or proceeding thereafter filed shall be docketed with the 125th District Court; the seventh case or proceeding and every twelfth case or proceeding thereafter filed shall be docketed with the 127th District Court; the eighth case or proceeding and every twelfth case or proceeding thereafter filed shall be docketed with the 129th District Court; the ninth case or proceeding and every twelfth case or proceeding thereafter filed shall be docketed with the 133rd District Court; the tenth case or proceeding and every twelfth case or proceeding thereafter filed shall be docketed with the 151st District Court; the eleventh case or proceeding and every twelfth case or proceeding thereafter filed shall be docketed with the 152nd District Court; the twelfth case or proceeding and every twelfth case or proceeding thereafter filed shall be docketed with the 157th District Court; and so on in rotation, and in this manner all cases or proceedings filed shall be docketed in and divided equally among the 11th, 127th, 55th, 61st, 80th, 113th, 125th, 129th, 133rd, 151st, 152nd, 157th Judicial District Courts, one twelfth ( $\frac{1}{12}$ ) in each court.

The District Judges of Harris County, Texas, shall on or before the first day of January and the first day of July of each year elect one of said District Judges as presiding Judge of the Harris County District

Judges. The Presiding Judge of Harris County District Judges shall, when this Act becomes effective, and from time to time as occasion may require in order to adjust the business and dockets of said Court, transfer, or cause to be transferred, upon the approval of the Judges of said Courts, causes from any one of said courts to any other of said courts in order that the business of said courts shall be continually equalized and distributed among them to the end that each judge shall be at all times provided with cases or proceedings to try or otherwise consider and that the trial of no cause shall be delayed because of the disqualification of the judge in whose court it is pending. When a case is transferred, proper order shall be entered on the minutes of the Court as evidence thereof. The clerk shall properly docket all cases transferred.

In case of the disqualification of the judge of any one of the said several courts in any case or proceeding, such case or proceeding may be transferred to any other of said courts with the consent of the judge thereof, or the judge of any other of said courts may sit in the court in which the case or proceeding is then pending and try or otherwise dispose of the same. All cases or proceedings transferred shall be properly docketed by the Clerk of the court to which transferred.

All bail bonds, recognizances or other obligations taken for the appearance of Defendants, parties and witnesses in any of the said District Courts or Criminal District Courts of Harris County, Texas, or any inferior court of Harris County, Texas, shall be binding on all such defendants, parties and witnesses and their sureties for appearance in any of said courts in which said cause may be pending or to which same may be transferred. In all cases transferred from one of said courts to another all process, bonds, recognizances, and obligations extant at time of such transfer shall be returned to and filed in the court to which the cause is transferred and shall be valid and binding as though originally issued out of the court to which it is transferred.

The judges of said District Courts and Criminal District Courts of Harris County, Texas, shall, by agreement among themselves, take vacations so that there shall at all times be at least six (6) judges of the said courts in the county during such vacation period.

During the absence of any of the judges of the District and Criminal District Courts of Harris County, Texas, for sickness, or for any other reason except disqualification, the practicing lawyers of the said courts shall not elect a Special Judge for any of said courts as now provided by law, until said lawyers have first requested the Presiding Judge of the Second Administrative Judicial District of Texas to assign a judge to preside over the Court during such absence and if said Presiding Judge has not made an assignment within a period of four (4) days from such request then said practicing lawyers may elect a Special Judge to preside over such court, as now provided by Title 40, Chapter 1, of the Revised Civil Statutes of the State of Texas, 1925.<sup>1</sup>

The judges of the said District Courts and Criminal District Courts shall continue to serve for the terms elected and to be elected as provided by the Constitution and Laws of the State of Texas, and in case a vacancy in the office of judge of any of the said courts by death, resignation and removal, the Governor of the State of Texas shall fill such vacancy by appointing thereto a suitable person possessing the qualifications required of judges of the District Courts to serve until the next general election and until his successor shall have been duly elected and qualified.

The District Clerk for said courts shall be elected as provided by the Constitution and Laws of the State of Texas and any vacancies in the

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

office of said Clerk shall be filled by appointment of the Judges of the several District Courts and Criminal District Courts.

The Judge of each of the several District Courts and Criminal District Courts shall appoint an Official Court Reporter for his Court as provided by general law to be compensated as provided by law.

The Sheriff of Harris County, either in person or by deputy, shall attend the several courts as required by law or when required by the judges thereof, and the sheriff and constables of the several counties of this State, when executing process out of said courts, shall receive fees as provided by general law for executing process issued out of District Courts.

The Clerk of the District Courts of Harris County shall be Clerk of the 11th, 55th, 61st, 80th, 113th, 125th, 127th, 129th, 133rd, 151st, 152nd, and 157th District Courts and Criminal District Courts and shall be compensated as provided by law.

The criminal District Attorney of Harris County shall be District Attorney of the 11th, 55th, 61st, 80th, 113th, 125th, 127th, 129th, 133rd, 151st, 152nd, and 157th District Courts and Criminal District Courts and shall be compensated as provided by law.

Each of the said District Courts shall have an official seal as provided by law for District Courts and Criminal District Courts.

The Grand Jury shall be empaneled by the judges of the Criminal District Courts of Harris County, Texas, as is now provided by law.

The procedure for drawing jurors for said courts shall be the same as is now or may hereafter be provided by law.

From and after the time this law shall take effect the District Courts and the Criminal District Courts of Harris County, Texas, shall have and exercise concurrent jurisdiction with each other in all cases, criminal and civil, and in all matters and proceedings of which jurisdiction is vested in District Courts by the Constitution and Laws of the State of Texas. The judge of any of the said District Courts and Criminal District Courts may in his discretion try and dispose of any causes, matters and proceedings for any other judge of said courts.

It is the purpose of this Act to constitute the District Courts and the Criminal District Courts of Harris County, Texas, as constitutional District Courts of general jurisdiction, as provided by the Constitution and Laws of the State of Texas. As amended Acts 1959, 56th Leg., p. 903, ch. 414, § 1.

<sup>1</sup> Article 1884 et seq.

Emergency. Effective May 30, 1959.

Section 2 of Acts 1959, 56th Leg., p. 903, ch. 414 contained a severability clause; section 3 provided: "All laws or parts of laws in conflict with this Act, are hereby repealed to the extent of such conflict only, provided, however, that nothing in this Act is intended to repeal or amend the provisions of House Bill No. 93, Acts of the Fifty-first Legislature, amending Section 4, Chapter 204, Acts of the Forty-eighth Legislature, or any existing law relating to Juveniles, the Juvenile Court of Harris County or the Judges thereof and in case

of any conflict with said Act the provisions of House Bill No. 93, Acts of the Fifty-first Legislature will control."

Criminal judicial district court of Harris County, see Vernon's Ann.C.C.P. art. 52-25 et seq.

Harris County

Criminal District Court, see Vernon's Ann.C.C.P. arts. 52-25 to 52-48.

Criminal District Court No. 2, see Vernon's Ann.C.C.P. art. 52-158.

Criminal District Court No. 3, see Vernon's Ann.C.C.P. art. 52-158a.

14, 44, 68, 95, 101, 116, 134. — Dallas; Criminal Judicial District; Criminal Judicial District No. 2; Criminal Judicial District No. 3

Criminal district court No. 2 of Dallas county, terms of court, see Vernon's Ann. C.C.P. art. 52—14.

Dallas County criminal district courts,

see Vernon's Ann.C.C.P. art. 52—1 et seq.

Terms of criminal district courts in Dallas County, see Vernon's Ann.C.C.P. art. 52—14.

17, 48, 67, 96. — Tarrant

Tarrant County Criminal District Court, see Vernon's Ann.C.C.P. art. 52—63 et seq.

28. — Nueces, Kleberg, and Kenedy

Criminal district court of Nueces. Kleberg, Kenedy, Willacy and Cameron counties, see Vernon's Ann. C.C.P. art. 52—62.

37, 45, 57, 73. — Bexar; Special 37th Judicial District; Criminal Judicial District; Criminal Judicial District No. 2

County court for criminal cases in Bexar County, see Vernon's Ann.C.C.P. art. 52—105, et seq.

43. — Wise, Jack and Parker

Sec. 5. There is hereby created the office of District Attorney for the 43rd Judicial District of Texas. The District Attorney for the 43rd Judicial District shall represent the State of Texas in all criminal cases in the 43rd District Court in each county embraced within the District and shall perform such other duties as are or may be provided by general law governing District Attorneys, and he shall receive such compensation as is allowed by law to other District Attorneys in this State. As amended Acts 1959, 56th Leg., p. 873, ch. 398, § 1.

Emergency. Effective Sept. 1, 1959.

Section 2 of Acts 1959, 56th Leg., p. 873, ch. 398 provided: "Sec. 2. The Governor shall appoint a qualified licensed attorney to serve as District Attorney for the 43rd Judicial District from September 1, 1959, until the General Election in 1960 and un-

til his successor has qualified. At the General Election in 1960 and thereafter, there shall be elected a District Attorney for the 43rd Judicial District for the full term provided for District Attorneys by the Constitution and Laws of this State."

53, 98, 126. — Travis

Criminal district court of Travis County, see Vernon's Ann.C.C.P. art. 52—49 et seq.

58, 60. — Jefferson

Jefferson County court at law, see Vernon's Ann.C.C.P. art. 52—141 et seq.

Compensation of reporters in Jefferson county, see art. 2326j—6.

64. — Hale, Swisher and Castro

Sec. 2. From and after the effective date of this Act, the 64th Judicial District shall be composed of the Counties of Hale, Swisher and Castro.

Sec. 6. From and after the effective date of this Act, the terms of the 64th Judicial District Court shall be as follows:

In the County of Hale beginning the first Mondays in January and July of each year designated as the January and July Terms, respectively.

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

In the County of Swisher beginning on the first Mondays in February and August of each year designated as the February and August Terms, respectively.

In the County of Castro beginning on the first Mondays in April and October of each year designated as the April and October Terms, respectively.

Sec. 7. Each term of Court shall continue until the convening of the next regular term of Court therein. The Judge of the 64th District Court may, in his discretion, hold as many sessions of Court in any term of Court as may be determined by him to be proper and expedient for the disposition of the Court's business and the jurors therefor may be summoned to appear before such District Court at such time as may be designated by the Judge thereof. Acts 1957, 55th Leg., p. 1476, ch. 506.

#### 70. — Midland and Ector

Ector county, see also 161st Judicial District.

#### 72. — Crosby and Lubbock

The 72nd Judicial District of Texas shall be composed of the Counties of Crosby and Lubbock. The terms of the District Court shall be held therein each year as follows:

In the County of Crosby, beginning on the second Monday in May and the second Monday in November.

In the County of Lubbock, beginning on the second Monday in February and the second Monday in August. As amended Acts 1959, 56th Leg., p. 425, ch. 190, § 2.

Emergency. Effective Sept. 1, 1959.

Section 4 of Acts 1959, 56th Leg., p. 425, ch. 190, provided: "The present Judge and District Attorney of the 72nd Judicial District and of the 106th Judicial District shall continue as the Judge and District Attorney of their respective districts as herein reorganized, unless they are disqualified by

the Laws of the State to continue in such office, in which event a successor shall be appointed as provided by law."

Removal of county from one judicial district to another, effect on cases and proceedings on docket, see note under art. 199(121).

#### 80. — Harris County

Harris County court at law, see Vernon's Ann.C.C.P. art. 52—118, et seq.

Harris County court at law No. 2, see Vernon's Ann.C.C.P. art. 52—125 et seq.

#### 94. — Nueces

Criminal district court, see Vernon's Ann. C.C.P. art. 52—62.

Effect of Acts 1959, 56th Leg., p. 56, ch. 31, creating court of domestic relations of

Nueces county, on jurisdiction of district courts of Nueces county, see art. 2338—10, § 19.

#### 101. — Dallas

Criminal district courts in Dallas County, see Vernon's Ann.C.C.P. art. 52—1 et seq.

#### 103. — Cameron and Willacy

Criminal district court, see Vernon's Ann. C.C.P. art. 52—62.

#### 105. — Nueces, Kleberg and Kenedy

Criminal district court of Nueces, Kleberg, Kenedy, Willacy and Cameron counties, see Vernon's Ann.C.C.P. art. 52—62.

Effect of Acts 1959, 56th Leg., p. 56, ch. 31, creating court of domestic relations of Nueces county, on jurisdiction of district courts of Nueces county, see art. 2338—10, § 19.

## 106. — Lynn, Garza, Dawson and Gaines

The 106th Judicial District of Texas shall be composed of the Counties of Lynn, Garza, Dawson and Gaines. The terms of the District Court shall begin therein each year as follows:

In the County of Lynn, beginning on the first Monday in February and on the third Monday in September.

In the County of Garza, beginning on the first Monday in March and on the fourth Monday in September.

In the County of Dawson, beginning on the third Monday in February and on the second Monday in September.

In the County of Gaines, beginning on the first Monday in April and on the first Monday in October.

Each term of court shall continue until the beginning of the next succeeding term of said court. As amended Acts 1959, 56th Leg., p. 425, ch. 190, § 3.

Emergency. Effective Sept. 1, 1959.

Continuance of judge and district attorney of 106th Judicial District as reorganized by Acts 1959, 56th Leg., p. 425, ch. 190, see note under art. 199(72).

Removal of county from one judicial district to another. effect on cases and proceedings on docket, see note under art. 199(121).

## 107. — Willacy and Cameron

Criminal district court of Willacy, and Cameron counties, see Vernon's Ann.C.C.P. art. 52-62.

## 116. — Dallas

Criminal district courts in Dallas County, see Vernon's Ann.C.C.P. art. 52-1 et seq.

## 117. — Nueces

Criminal district court, see Vernon's Ann. C.C.P. art. 52-62.

Effect of Acts 1959, 56th Leg., p. 56, ch. 31, creating court of domestic relations of

Nueces county, on jurisdiction of district courts of Nueces county, see art. 2338-10, § 19.

## 121. — Cochran, Hockley, Terry and Yoakum

Section 1. There is hereby created the 121st Judicial District of Texas, to be composed of the Counties of Cochran, Hockley, Terry and Yoakum. The District Court of the 121st Judicial District shall have the jurisdiction provided by the Constitution and Laws of this State for District Courts. The terms of the District Court shall be held therein each year as follows:

In the County of Cochran, beginning on the second Monday in March and the second Monday in September.

In the County of Hockley, beginning on the second Monday in April and the second Monday in October.

In the County of Terry, beginning on the second Monday in May and the second Monday in November.

In the County of Yoakum, beginning on the second Monday in June and the second Monday in December. Acts 1959, 56th Leg., p. 425, ch. 190, § 1.

Emergency. Effective Sept. 1, 1959.

Section 5 of Acts 1959, 56th Leg., p. 425, ch. 190 provided: "Immediately upon the effective date of this Act, the Governor shall appoint a qualified attorney to serve as the Judge of the 121st Judicial District until the next General Election, at which

time a Judge shall be elected to serve a term of four (4) years. He shall receive such compensation as allowed other District Judges under the Laws of this State."

Section 9 provided: "Whenever any county by this Act is removed from one judicial district and placed in another ju-

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dicial district, all cases and proceedings on the docket or dockets of the court of the district from which the county was removed together with all records, documents and instruments on file in connection therewith shall be transferred by the district clerk of such county to the district court of the judicial district in which such county is placed and there be by him properly docketed; provided, however, that as

to any suit already heard in district court of any county which becomes a part of the 121st Judicial District created by this Act, the judge of the district court in which such suit was tried shall retain jurisdiction of such suit until final judgment is rendered and thereafter until all motions duly filed in such suit are acted upon."

District attorney for the 121st judicial district, see arts. 326k-41, 326k-41a.

### 131. — Bexar

Criminal judicial district court of Bexar County, see Vernon's Ann.C.C.P. art. 52-161.

### 132. — Scurry and Borden

Sec. 6. The 132nd Judicial District of Texas is hereby created and shall be composed of Scurry and Borden Counties and shall be known as the District Court of the 132nd Judicial District, to be in existence from and after the effective date of this Act. The District Court of the 132nd Judicial District shall have and exercise civil and criminal jurisdiction coextensive with the limits of Scurry and Borden Counties in all actions, proceedings, matters and causes of which District Courts of general jurisdiction are given jurisdiction by the Constitution and laws of the State of Texas. As amended Acts 1959, 56th Leg., p. 915, ch. 420, § 1.

Effective 90 days after May 12, 1959, date of adjournment.

### 136. — Jefferson

Criminal district court of Jefferson County, see Vernon's Ann.C.C.P. art. 52-160 et seq.

### 138. — Willacy and Cameron

Criminal district court, see Vernon's Ann. C.C.P. art. 52-62.

### 146. Bell

Section 1. An additional District Court is hereby created in and for the County of Bell, State of Texas, the limits of which district shall be coextensive with the limits of said County. Said Court shall be known as the 146th District Court.

Sec. 2. Beginning with the General Election of 1960 and thereafter a Judge shall be elected as Judge of the 146th District Court as provided by the Constitution and Laws of the State of Texas, and no Judge shall be appointed to hold office until the first such election.

Sec. 3. The terms of the District Court of the 146th Judicial District shall be on the first Mondays in January and June, and each term of Court may continue in session until the Saturday night immediately preceding the Monday for convening the next regular term of such court. In the above named County in which there are two (2) or more District Courts, such District Courts shall have concurrent jurisdiction with each other in said County throughout the limits thereof, of all matters, civil and criminal of which jurisdiction is given to the District Court by the Constitution and Laws of this State.



The Judge of said Court in his discretion may hold as many sessions of Court in any term of the Court in any County as is deemed by him proper and expedient for the dispatch of business.

In any of the above said Counties in which there are two (2) or more District Courts, the Judges of such Courts may, in their discretion, either in termtime or in vacation, on motion of any party or on agreement of the parties, or on their own motion, transfer any case, or proceeding, civil, or criminal, on their dockets to the docket of one of the other said District Courts; and the Judges of said Courts may, in their discretion, exchange benches or districts from time to time; and whenever a Judge of one of said Courts is disqualified, he shall transfer the case, or proceeding from his Court to one of the other Courts, and any of said Judges may in his own courtroom try and determine any case or proceeding pending in either of the other Courts, without having the case transferred or may sit in any of the other said Courts and there hear and determine any case, or proceeding, there pending, and each judgment and order shall be entered in the minutes of the Court in which the case is pending, and two (2) or more Judges may try different cases in the same Court at the same time and each may occupy his own courtroom or the room of any other Court. In case of absence, sickness or disqualification of any of said Judges, any other of said Judges may hold Court for him. Any of said Judges may hear any part of any case or proceeding pending in any of said Courts and determine the same or may hear or determine any question in any case or proceeding and any other of said Judges may complete the hearing and render judgment in the same. Any of said Judges may hear and determine demurrers, motions, petitions for injunction, application for appointment of receivers, interventions, pleas of privilege, pleas in abatement and all dilatory pleas, motions for new trials and all preliminary matters, questions and proceeding and may enter judgment or order thereon in the Court in which the case or proceeding is pending, without having the same transferred to the Court of the Judge acting and the Judge in whose Court the same is pending may thereafter proceed to hear, complete and determine the same or other matter or any part thereof and render final judgment thereon. Any of the Judges of said Courts may issue restraining orders and injunctions returnable to any of the other Judges of Courts.

The specific matters mentioned in this Section shall not be construed as any limitation on the powers of such Judges when acting for any other Judge by exchange of benches or otherwise.

Sec. 4. The District Clerk, Sheriff and District Attorney of the County shall perform all the duties and functions relative to all District Courts of their County as is required by law for the District Court thereof.

Sec. 5. The Judge of the 146th District Court is authorized to appoint an official court reporter for his Court and said court reporter shall have the qualifications now required by law for official shorthand reporters. Such reporter shall perform the duties as required by law and such duties as may be assigned to the court reporter by the Judge of the Court to which the reporter is appointed and shall receive as compensation for his services the compensation now allowed or hereafter allowed for official shorthand reporters for District Courts under the Laws of this State.

Sec. 6. All process, writs, bonds, recognizances or other obligations issued out of District Courts of the county coming under this Act are hereby made returnable to the terms of the District Courts of said County, as said terms are fixed by law and by this Act, and all bonds executed and recognizances entered in said Courts shall bind the parties for their appearance or to fulfill the obligations of such bonds or recognizances at the terms of such Court as fixed by law and by this Act; and all process here-

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tofore returned, as well as all bonds and recognizances heretofore taken in the District Courts of the County herein, shall be valid. Acts 1959, 56th Leg., p. 1075, ch. 490.

Effective 90 days after May 12, 1959, date of adjournment.

Section 7 of the Act of 1959 repealed all conflicting laws and parts of laws. To the extent of such conflict. Section 8 contained a severability clause.

#### 150. — Bexar

Bexar County court for criminal cases, see Vernon's Ann.C.C.P. art. 52—105 et seq.

#### 153. — Tarrant

Tarrant County criminal district court, see Vernon's Ann.C.C.P. art. 52—63 et seq.

#### 154. — Lamb, Bailey and Parmer

Section 1. From and after the effective date of this Act, there is hereby created the 154th Judicial District of Texas to be composed of the Counties of Lamb, Bailey and Parmer.

Sec. 8. From and after the effective date of this Act, the terms of the 154th Judicial District Court shall be as follows:

In the County of Lamb beginning on the first Mondays in January and July of each year designated as the January and July Terms, respectively.

In the County of Bailey beginning on the first Mondays of February and August of each year designated as the February and August Terms, respectively.

In the County of Parmer beginning on the first Mondays in March and September of each year designated as the March and September Terms, respectively.

Sec. 9. Each term of Court shall continue until the convening of the next regular term of Court therein. The Judge of the 154th District Court may, in his discretion, hold as many sessions of Court in any term of Court as may be determined by him to be proper and expedient for the disposition of the Court's business and the jurors therefor may be summoned to appear before such District Court at such time as may be designated by the Judge thereof.

Sec. 11. The 154th Judicial District shall have a seal in like design as is provided by law for seals of such Court. Acts 1957, 55th Leg., p. 1476, ch. 506.

#### 160. — Dallas

Criminal district courts of Dallas County, see Vernon's Ann.C.C.P. art. 52—1 et seq.

#### 161. — Ector

Section 1. There is created hereby in and for Ector County, Texas, one (1) additional District Court, the limits of which district shall be coextensive with the limits of Ector County; said Court shall be known as the District Court of the 161st Judicial District of Texas.

Sec. 2. The 161st District Court shall have and exercise the powers conferred by the Constitution and Laws of the State of Texas on the Judges of the District Courts of Ector County, Texas. The jurisdiction

shall be concurrent with that of the existing District Court of Ector County, Texas.

Sec. 3. The terms of the 161st District Court shall begin on the first Monday in March and September of each year respectively, and each term of said Court shall continue until the convening of the next succeeding term.

Sec. 4. Upon the effective date of this Act, the Governor shall appoint a suitable person as Judge of said Court herein created, who shall hold office until the next General Election and until his successor has been duly elected and qualified. At the next General Election after the creation of the one (1) District Court numbered herein, a Judge of the said Court shall be elected for a term of four (4) years and until his successor shall have been duly elected and qualified. Such person so appointed and elected shall have the qualifications provided by the Constitution and the Laws of this State for District Judges. The Judge of the Court created by this Act shall draw the same compensation that is provided by the Laws of the State of Texas for the District Judge of Ector County.

Sec. 5. The Judge of the 161st District Court is authorized to appoint an official Court Reporter for his Court and said Court Reporter shall have the qualifications now required by law for official shorthand reporters. Such Reporters shall perform the duties as required by law and such duties as may be assigned to the Court Reporter by the Judge of the Court to which the Reporter is appointed and shall receive as compensation for his services the compensation now allowed or hereinafter allowed for the official shorthand reporters for the District Court of Ector County under the Laws of this State.

Sec. 6. The letters "A" and "B" shall be placed on the docket and the court papers of the respective District Courts of Ector County to distinguish them, the letter "A" being used in connection with the 70th District Court, and the letter "B" being used in connection with the 161st District Court. As soon as possible after this Act takes effect the District Clerk of Ector County shall, under the direction of the District Judges of Ector County, cause the civil and criminal dockets to be equalized in the number of cases pending in each of the District Courts by transferring pending civil and criminal cases in such numbers as will be necessary to equalize the dockets of each of the existing courts; and thereafter civil and criminal cases shall be docketed by the District Clerk in rotation from "A" through "B" as such cases are filed, or in any other manner as directed by the District Judges of Ector County.

Sec. 7. The Judge of any of the District Courts in Ector County may in his discretion try and dispose of any causes, matters or proceedings for the other Judge of said Courts. Either of the Judges of said District Courts of Ector County may at his discretion at termtime or in vacation transfer a case or cases to said other District Court with the consent of the Judge of said other District Court by order entered in the minutes of his Court. When such transfer is ordered, the District Clerk of Ector County shall certify all orders made in said case and such certified copies of such orders together with the original papers shall be filed among the papers of the case thus transferred and the fees thereof shall be taxed as part of the cost of said suit and the Clerk of said Court shall docket any such case in the Court to which it shall have been transferred, and when so entered, the Court to which the same shall have been thus transferred shall have like jurisdiction therein as in cases originally filed in said Court. All process and writs issued out of the District Court from which any such transfer is made shall be returnable to the Court to which said transfer is

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made, according to the terms of the District Court or the respective Court as fixed by this Act.

Sec. 8. The District Clerk of Ector County shall also act as District Clerk for the 161st District Court of Ector County.

Sec. 9. The District Attorney in and for the 70th Judicial District shall act also as the District Attorney for the District Court created herein.

Sec. 10. The Sheriff of Ector County shall attend either in person or by Deputy the 161st District Court, as required by law in Ector County or when required by the Judge thereof, and the Sheriffs and Constables of the several counties of this State when executing process out of said Courts shall receive fees provided by General Law for executing process out of District Courts.

Sec. 11. All process, writs, bonds, recognizances or other obligations issued out of the District Courts of Ector County are hereby made returnable to the terms of the District Courts of Ector County as said terms are fixed by law and by this Act, and all bonds executed and recognizances entered by and in said Court shall bind the parties for their appearance or to fulfill the obligations of such bonds and recognizances heretofore taken in the District Court of Ector County shall be valid.

Sec. 12. All grand and petit juries drawn and selected under existing laws in Ector County shall be considered lawfully drawn and selected for either the 161st District Court or the 70th District Court, and may be used interchangeably in connection with said Courts. Acts 1959, 56th Leg., p. 528, ch. 233.

Emergency. Effective Sept. 1, 1959.

Section 13 of the Act of 1959 made the Ector county, see also 70th Judicial District. Act effective Sept. 1, 1959, and section 14 contained a severability clause.

## ADMINISTRATIVE JUDICIAL DISTRICTS

### Art. 200a. Administrative Judicial Districts

#### Numbers and composition

Section 1. The State of Texas is hereby divided into nine (9) Administrative Judicial Districts, which districts shall be numbered and composed of Counties as follows:

First—Bowie, Red River, Lamar, Fannin, Grayson, Collin, Hunt, Delta, Hopkins, Franklin, Titus, Morris, Camp, Cass, Marion, Harrison, Gregg, Upshur, Wood, Rains, Kaufman, Van Zandt, Dallas, Ellis, Henderson, Anderson, Houston, Cherokee, Nacogdoches, Angelina, Panola, Shelby, Smith, Rusk.

Second—San Augustine, Sabine, Jasper, Newton, Orange, Jefferson, Tyler, Hardin, Liberty, Chambers, Galveston, Harris, Brazoria, Matagorda, Wharton, Fort Bend, Waller, Montgomery, San Jacinto, Polk, Walker, Trinity, Grimes, Madison, Leon, Brazos, Freestone, Limestone, Burleson, Washington, Bastrop, Robertson, Lee.

Third—Johnson, Somervell, Bosque, Hill, Navarro, McLennan, Falls, Milam, Williamson, Travis, Austin, Fayette, Caldwell, Comal, Hays, Colorado, Lavaca, Gonzales, Guadalupe, Blanco, Burnet, San Saba, Llano, Mason, Menard, Bell, Lampasas, Mills, Coryell, Hamilton, Comanche.

Fourth—Jackson, Calhoun, Aransas, Refugio, San Patricio, Bee, Live Oak, McMullen, Goliad, Victoria, DeWitt, Karnes, Wilson, Atascosa, Frio, LaSalle, Dimmit, Webb, Zapata, Jim Hogg, Bexar.

Fifth—Nueces, Kleberg, Kenedy, Jim Wells, Duval, Brooks, Starr, Hidalgo, Willacy, Cameron.

Sixth—Maverick, Kinney, Edwards, Val Verde, Terrell, Kerr, Kendall, Bandera, Gillespie, Kimble, Real, Medina, Uvalde, Zavala, Sutton, Crockett, Pecos, Brewster, Jeff Davis, Presidio, Culberson, Hudspeth, El Paso, Upton, Reagan.

Seventh—Yoakum, Terry, Lynn, Garza, Gaines, Dawson, Andrews, Martin, Loving, Winkler, Ector, Midland, Glasscock, Reeves, Ward, Crane, Sterling, Coke, Irion, Tom Green, Schleicher, Borden, Scurry, Howard, Mitchell, Nolan, Taylor, Callahan, Shackelford, Throckmorton, Haskell, Jones, Fisher, Stonewall, Kent, Runnels, Coleman, Brown, McCulloch, Concho.

Eighth—Cooke, Denton, Montague, Clay, Wichita, Archer, Jack, Wise, Young, Stephens, Eastland, Erath, Hood, Palo Pinto, Parker, Tarrant.

Ninth—Wilbarger, Baylor, Knox, King, Dickens, Motley, Cottle, Crosby, Lubbock, Hockley, Cochran, Bailey, Lamb, Hale, Floyd, Castro, Swisher, Briscoe, Parmer, Deaf Smith, Oldham, Hartley, Dallam, Sherman, Moore, Potter, Randall, Armstrong, Hansford, Ochiltree, Lipscomb, Hutchinson, Roberts, Hemphill, Carson, Gray, Wheeler, Donley, Collingsworth, Hall, Childress, Hardeman, Foard. As amended Acts 1959, 56th Leg., p. 901, ch. 413, § 1.

Emergency. Effective May 30, 1959.

**TITLE 15—ATTORNEYS—DISTRICT AND COUNTY**

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| <p>1. DISTRICT ATTORNEYS</p> <p>Art.<br/>326k—30a. One hundred and forty second judicial district of Midland county; stenographers; assistants; special investigators [New].</p> <p>326k—41. One hundred and twenty-first judicial district; creation of office [New].</p> <p>326k—41a. One hundred and twenty-first judicial district; investigators or assistants; stenographers [New].</p> | <p>Art.<br/>326k—42. District attorney of Roberts county; representation of state in criminal cases [New].</p> <p>326k—43. Authority of Bell county to supplement salary of District Attorney to 27th Judicial District [New].</p> <p>2. COUNTY ATTORNEYS</p> <p>331i. County attorney of Midland county; employment of stenographers; assistants and special investigators [New].</p> |
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**1. DISTRICT ATTORNEYS**

**Art. 326k—1. Criminal District attorneys in counties constituting three or more judicial districts**

Criminal District Attorney of Hidalgo County, Texas. Acts 1959, 56th Leg., p. 148, ch. 89, §§ 1-3, effective April 23, 1959, confirmed the existence of the office of Criminal District Attorney of Hidalgo County, Texas, provided for its continua-

tion in existence with all the powers, duties and privileges as are by law now conferred or which may hereafter be conferred upon District and County Attorneys, and provided for the official bond of such Criminal District Attorney.

**Art. 326k—12. Counties of 70,000 to 220,000 and counties of 39,000 to 50,000; 30th Judicial District**

**Investigators and assistants for Criminal District Attorney of McLennan county; salaries**

Sec. 2b. The salary of the investigators and assistants appointed by the Criminal District Attorney of McLennan County shall be fixed at a sum of not more than Six Thousand, Five Hundred Dollars (\$6,500) per annum, nor less than Three Thousand Dollars (\$3,000) per annum. Added Acts 1959, 56th Leg., p. 564, ch. 255, § 1.

Emergency. Effective May 26, 1959.

**Art. 326k—21. Assistant district attorney and stenographer in 27th Judicial District**

From and after the passage of this Act the District Attorney of the 27th Judicial District, with the consent of each of the Commissioners Courts comprising such judicial district, is authorized to appoint an Assistant District Attorney and a stenographer for such district. The Assistant District Attorney shall be paid an annual salary not to exceed Five Thousand, Five Hundred Dollars (\$5,500) per annum and the stenographer shall be paid an annual salary not to exceed Four Thousand, Two Hundred Dollars (\$4,200) per annum. The salaries of such Assistant District Attorney and stenographer shall be paid from the Officers Salary Fund of the counties comprising said judicial district and the amount to be paid by each county shall be determined according to population. The Assistant District Attorney must be duly and legally licensed to practice law in the State of Texas and shall be authorized to perform all duties

imposed upon the District Attorney by law. As amended Acts 1959, 56th Leg., p. 876, ch. 401, § 1.

Emergency. Effective May 30, 1959.

Section 2 of the amendatory Act of 1959 contained a severability clause.

**Art. 326k—30a.** One hundred and forty second judicial district of Midland county; stenographers; assistants; special investigators

**Application for appointment of assistants, investigators or stenographers; order authorizing employment; appointment**

**Section 1.** Whenever the District Attorney of the 142nd Judicial District shall require the services of assistants, investigators or stenographers in the performance of his duty, he shall apply to the Commissioners Court of Midland County for authority to appoint such assistants, investigators or stenographers, stating by sworn application the number needed, the position to be filled, and the amount to be paid. Upon receipt of such application the Commissioners Court of Midland County may enter an order authorizing the employment of such assistants, investigators and stenographers and fix the compensation to be paid them within the limitations herein prescribed and determine the number to be appointed as in the discretion of the Commissioners Court may be proper. In no case shall the Commissioners Court or any member thereof attempt to influence the employment of any person as assistant, investigator or stenographer. Upon entry of such order the District Attorney of the 142nd Judicial District shall be authorized to employ the assistants, investigators and stenographers as authorized by the Commissioners Court of Midland County provided that the compensation paid each of said employees shall not be less than the minimum nor exceed the maximum amounts prescribed in Sections 2 and 3 of this Act.

#### **Salary of stenographers**

**Sec. 2.** Each stenographer of the District Attorney in the 142nd Judicial District shall be paid a salary of not less than Three Thousand, Six Hundred Dollars (\$3,600) per annum and not more than Four Thousand, Eight Hundred Dollars (\$4,800) per annum as determined by the Commissioners Court of Midland County to be paid in equal monthly installments out of the Officer's Salary Fund, the General Fund or any other available fund of Midland County.

#### **Salary of assistants and investigators**

**Sec. 3.** Each assistant of the District Attorney of the 142nd Judicial District shall be paid a salary of not less than Four Thousand, Eight Hundred Dollars (\$4,800) per annum and not more than Seven Thousand, Five Hundred Dollars (\$7,500) per annum as determined by the Commissioners Court of Midland County to be paid in equal monthly installments out of the Officer's Salary Fund, the General Fund or any other available fund of Midland County. Each investigator shall be paid a salary of not less than Four Thousand, Eight Hundred Dollars (\$4,800) nor more than Six Thousand, Three Hundred Dollars (\$6,300) per annum as determined by the Commissioners Court of Midland County to be paid in equal monthly installments out of the Officer's Salary Fund, the General Fund or any other available fund of Midland County.

**Qualifications of assistants; duties**

Sec. 4. The assistants to the District Attorney of the 142nd Judicial District must be duly and legally licensed to practice law in the State of Texas and shall be authorized to perform all duties imposed on the District Attorney by law.

**Qualifications of investigators; powers; expenses**

Sec. 5. Investigators for the District Attorney need not be licensed to practice law. They shall have authority to make arrests and execute process in criminal cases, and shall have the rights and duties of a peace officer in criminal cases and in cases growing out of the enforcement of all laws. In addition to their salaries, investigators may be allowed actual and necessary travel expenses incurred in the proper discharge of their duties, not to exceed the amount fixed by the Commissioners Court of Midland County, Texas. All claims for travel expenses for the investigators shall be paid from the General Fund, the Officer's Salary Fund, or any other available fund of Midland County, Texas.

**Furnishing automobile; office furniture and supplies**

Sec. 6. The Commissioners Court of Midland County, Texas, is authorized to furnish an automobile or automobiles for use of the District Attorney's office in carrying out the official duties of the office, and to provide for the maintenance thereof. It is further authorized to furnish telephones, typewriters, office furniture, supplies, and such other items and equipment as it deems necessary to carry out the official duties of the District Attorney's office, and to pay the necessary and essential expenses incident to carrying out the official duties of the District Attorney and his office.

**Bond**

Sec. 7. The stenographers, special investigators, and assistants to the District Attorney may be required by the Commissioners Court of Midland County, Texas, to give bond in such amount as the court may direct.

**Compensation of district attorney; supplemental salary**

Sec. 8. The District Attorney of the 142nd Judicial District shall be compensated for his services in such amount as may be fixed by the General Law relating to the salary to be paid to District Attorneys by the State, and in addition his salary may be supplemented by the Commissioners Court of Midland County; but his total salary shall not be supplemented to exceed the salary paid the County Attorney of Midland County or the sum of Ten Thousand Dollars (\$10,000), whichever is higher. The Commissioners Court of Midland County in its discretion is authorized to pay the supplemental salary herein authorized, in such amount as it may determine within the limit fixed by this Section. Acts 1959, 56th Leg., p. 868, ch. 394.

Emergency. Effective May 30, 1959.

Assistant district attorneys, special investigators and stenographers in certain counties, see art. 324.

Fees of assistants or other appointees of district attorney, see art. 3886a.

**Art. 326k—41. One hundred and twenty-first judicial district; creation of office**

There is hereby created the office of District Attorney for the 121st Judicial District of Texas. Said District Attorney shall represent the



State of Texas in all criminal cases in the District Court in each County within the District and shall perform such other duties as are or may be provided by General Law governing District Attorneys, and he shall receive such compensation as allowed other District Attorneys under the Laws of this State. Acts 1959, 56th Leg., p. 425, ch. 190, § 6.

Emergency. Effective Sept. 1, 1959.

Section 7 of Acts 1959, 56th Leg., p. 425, ch. 190 provided: "Immediately upon the effective date of this Act, the Governor shall appoint a qualified attorney to serve as District Attorney for the 121st Judicial

District until the next General Election, at which time a District Attorney shall be elected to serve a term of four (4) years."

Creation of the 121st judicial district, see art. 199(121).

**Art. 326k—41a. One hundred and twenty-first judicial district; investigators or assistants; stenographers**

The District Attorney of the 121st Judicial District, with the consent of the District Judge of the 121st Judicial District and the combined majority of the Commissioners Courts of the counties composing the 121st Judicial District, is hereby authorized to appoint not more than two (2) investigators or assistants. Such investigators or assistants shall receive a salary of not less than Three Thousand Dollars (\$3,000) and not to exceed Four Thousand Dollars (\$4,000) per annum each. The salaries shall be fixed by the Commissioners Courts of the several counties composing the 121st Judicial District. The assistants to the District Attorney must be duly and legally licensed to practice law in the State of Texas; however, the investigators need not be licensed attorneys. The investigators or assistants provided for in this Act shall be allowed a reasonable amount for expenses not to exceed Twelve Hundred Dollars (\$1,200) per annum. The District Attorney of the 121st Judicial District shall be authorized to employ a stenographer, who shall receive a salary not to exceed Twenty-four Hundred Dollars (\$2,400) per annum. The salary of the investigators, assistants, and stenographer provided for in this Act and the expenses provided for in this Act shall be paid monthly by the Commissioners Court of each county composing the 121st Judicial District out of the Officers' Salary Fund of the county. Such salary and expenses shall be prorated according to the population of the respective counties. The investigators or assistants provided for in this Act may be required to give bond and shall have authority under the direction of the District Attorney to make arrests and execute process in criminal cases and in cases growing out of the enforcement of all laws. Acts 1959, 56th Leg., p. 425, ch. 190, § 8.

Emergency. Effective Sept. 1, 1959.

Creation of the 121st judicial district, see art. 199(121).

**Art. 326k—42. District Attorney of Roberts County; representation of state in criminal cases**

The District Attorney for Roberts County shall represent the state in all criminal cases before the County Court of Roberts County, Texas. The County Commissioners Court of Roberts County may supplement the salary of the District Attorney for Roberts County, and may pay his reasonable and necessary expenses in connection with his duties in Roberts County. Acts 1959, 56th Leg., p. 772, ch. 351, § 1.

Effective 90 days after May 12, 1959, date of adjournment.

**Title of Act:**

An Act relating to the representation of the state by the District Attorney for Roberts County in all criminal cases before the

County Court of Roberts County; providing for supplemental compensation by the Commissioners Court; and declaring an emergency. Acts 1959, 56th Leg., p. 772, ch. 351.

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

**Art. 326k—43. Authority of Bell County to supplement salary of District Attorney of 27th Judicial District**

The Commissioners Court of Bell County, Texas, in the 27th Judicial District of the State of Texas, is hereby authorized to supplement the salary paid by the State of Texas to the District Attorney of the 27th Judicial District of the State of Texas, by an additional salary of One Thousand, Five Hundred Dollars (\$1,500) per year. This supplemental salary that may be paid by the said Commissioners Court of Bell County, Texas, may be paid in addition to the salary paid said District Attorney by the State of Texas under existing law. The amount of any such supplemental salary that may be paid by the said Commissioners Court of said County shall be fixed and determined by the Commissioners Court of said County. Acts 1959, 56th Leg., p. 936, ch. 432, § 1.

Emergency. Effective May 30, 1959.

Section 2 of the Act of 1959 contained a severability clause.

**Title of Act:**

An Act authorizing Bell County to supplement the salary of the District Attorney

of the 27th Judicial District; providing for severability; providing for the maximum supplemental salary that may be paid by Bell County; and declaring an emergency. Acts 1959, 56th Leg., p. 936, ch. 432.

## 2. COUNTY ATTORNEYS

**Art. 331g—1. Investigators in counties of over 37,000**

Sec. 2a. Any investigator appointed by a county attorney under authority of this law shall not by virtue of such appointment be permitted to carry arms in the conduct of his duties but he shall be subject to the prohibitions against carrying arms contained in Article 483 of the Penal Code of the State of Texas, as amended, and similar statutes, the same as any private citizen; and it is further provided that such investigator shall not by virtue of his official position be empowered to make arrests. Added Acts 1959, 56th Leg., p. 663, ch. 306, § 1.

Emergency. Effective May 30, 1959.

**Art. 331i. County attorney of Midland county; employment of stenographers, assistants and special investigators**

**Application for authority to appoint assistants, investigators or stenographers; order authorizing employment**

Section 1. Whenever the County Attorney of Midland County shall require the services of assistants, investigators or stenographers in the performance of his duty, he shall apply to the Commissioners Court of such County for authority to appoint such assistants, investigators or stenographers, stating by sworn application the number needed, the position to be filled, and the amount to be paid. Upon receipt of such application the Commissioners Court of such County may enter an order authorizing the employment of such assistants, investigators and stenographers and fix the compensation to be paid them within the limitations herein prescribed and determine the number to be appointed as in the discretion of the Commissioners Court may be proper. In no case shall the Commissioners Court or any member thereof attempt to influence the employment of any person as assistant, investigator or stenographer. Upon entry of such order the County Attorney of such County shall be authorized to employ the assistants, investigators and stenographers as authorized by the Commissioners Court of such County provided that the compensation paid

each of said employees shall not be less than the minimum nor exceed the maximum amounts prescribed in Sections 2 and 3 of this Act.

**Stenographers; salaries**

Sec. 2. Each stenographer of the County Attorney of such County shall be paid a salary of not less than Three Thousand, Six Hundred Dollars (\$3,600) per annum and not more than Four Thousand, Eight Hundred Dollars (\$4,800) per annum as determined by the Commissioners Court of such County, to be paid in equal monthly installments out of the Officer's Salary Fund, the General Fund or any other available fund of such County.

**Assistants; salaries**

Sec. 3. Each assistant of the County Attorney of such County shall be paid a salary of not less than Four Thousand, Eight Hundred Dollars (\$4,800) per annum and not more than Seven Thousand, Five Hundred Dollars (\$7,500) per annum as determined by the Commissioners Court of such County to be paid in equal monthly installments out of the Officer's Salary fund, the General Fund or any other available fund of such County. Each investigator shall be paid a salary of not less than Four Thousand, Eight Hundred Dollars (\$4,800) per annum nor more than Six Thousand, Three Hundred Dollars (\$6,300) per annum as determined by the Commissioners Court of such County to be paid in equal monthly installments out of the Officer's Salary Fund, the General Fund or any other available fund of such County.

**Qualifications of assistants; duties**

Sec. 4. The assistants to the County Attorney of such County must be duly and legally licensed to practice law in the State of Texas and shall be authorized to perform all duties imposed on the County Attorney of such County by law.

**Investigators; authority; expenses**

Sec. 5. Investigators for the County Attorney need not be licensed to practice law. They shall have authority to make arrests and execute process in criminal cases, and shall have the rights and duties of a peace officer in criminal cases and in cases growing out of the enforcement of all laws. In addition to their salaries, investigators may be allowed actual and necessary travel expenses incurred in the proper discharge of their duties, not to exceed the amount fixed by the Commissioners Court of such County. All claims for travel expenses for the investigators shall be paid from the General Fund, the Officer's Salary Fund, or any other available fund of such County.

**Automobiles for official duties; furnishing office supplies and equipment**

Sec. 6. The Commissioners Court of such County is authorized to furnish an automobile or automobiles for use of the County Attorney's office in carrying out the official duties of the office, and to provide for the maintenance thereof. It is further authorized to furnish telephones, typewriters, office furniture, supplies, and such other items and equipment as it deems necessary to carry out the official duties of the County Attorney's office, and to pay the necessary and essential expenses incident to carrying out the official duties of the County Attorney and his office.

**Bonds**

Sec. 7. The stenographers, special investigators, and assistants to the County Attorney may be required by the Commissioners Court of such County to give bond in such amount as the Court may direct.

**Termination of services**

Sec. 8. All stenographers, special investigators and assistant County Attorneys appointed under the provisions hereof may have their services terminated at any time by the County Attorney of such County. Acts 1959, 56th Leg., p. 957, ch. 446.

Emergency. Effective May 30, 1959.

Section 9 of the Act of 1959 repealed all conflicting laws and parts of laws to the extent of such conflict, section 10 contained a severability clause.

Appointment of assistant county attorneys, see art. 3887.

Assistants and other appointments by county attorneys of 125,001, see art. 3886a.

Deputies and assistants, see art. 3886.

TITLE 16—BANKS AND BANKING

TEXAS BANKING CODE OF 1943

CHAPTER ONE—SCOPE OF ACT, DEFINITIONS, FINANCE  
COMMISSION AND STATE BANKING BOARD

Art. 342—109. Finance Commission—Expenses and Compensation of  
Members

Each member of the Finance Commission shall be reimbursed all expenses incidental to travel incurred by him in connection with the performance of his official duties and in addition shall receive Twenty-five Dollars (\$25) per day compensation for his services for each day or fraction thereof while in attendance at any meeting of the Commission or either section thereof and while traveling to or from such meetings. As amended Acts 1959, 56th Leg., p. 894, ch. 412, § 1.

Emergency. Effective May 30, 1959.

Section 12 of the amendatory Act of 1959 contained a severability clause.

CHAPTER TWO—THE BANKING DEPARTMENT OF TEXAS

Art. 342—208A. Repealed. Acts 1959, 56th Leg., p. 894, ch. 412, § 2.  
Eff. May 30, 1959.

CHAPTER THREE—INCORPORATION, MERGER, REORGANIZATION,  
PURCHASE OF ASSETS OF ANOTHER BANK, DISBURSING AGENT,  
AMENDMENT OF ARTICLES OF ASSOCIATION OF STATE BANKS,  
AND CONVERSION

Art. 342—301. Powers

Inapplicability of Acts 1957, 55th Leg., p. 1162, ch. 388 to corporations acting only as attorneys-in-fact for reciprocal or inter-  
insurance exchanges, see note under V.A. T.S. Insurance Code, arts. 7.01 to 7.18.

Art. 342—303. Capital, Surplus and Reserve Requirements

No State bank shall be hereafter chartered with a capital less than the following requirements, nor shall any State bank be permitted to reduce its capital below such requirements, said requirements to be determined by the last Federal Census preceding the granting of the charter or the reduction in capital:

(a) If domiciled in a city or town with not over six thousand (6,000) population, a minimum capital of Fifty Thousand Dollars (\$50,000).

(b) If the population is over six thousand (6,000) and less than twenty-five thousand (25,000), a minimum capital of Seventy-five Thousand Dollars (\$75,000).

(c) If the population is over twenty-five thousand (25,000) and less than fifty thousand (50,000), a minimum capital of One Hundred Thousand Dollars (\$100,000).

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

(d) If the population is over fifty thousand (50,000), a minimum capital of Two Hundred Thousand Dollars (\$200,000).

Any State bank authorized to exercise the trust or other powers specified in Subsection (b), (c) or (d) of Article 1 of this Chapter shall have at least Seventy-five Thousand Dollars (\$75,000) capital. The State Banking Board may, in granting a charter, require surplus to be paid in an amount not to exceed twenty-five per cent (25%) of the common capital and, in addition, require reserves to be paid in an amount not to exceed twenty-five per cent (25%) of the common capital. As amended Acts 1959, 56th Leg., p. 894, ch. 412, § 3.

<sup>1</sup> Article 342—301.

Emergency. Effective May 30, 1959.

#### Art. 342—310. Purchase of Assets of Another Bank—Disbursing Agent

Corporations acting as attorneys-in-fact for reciprocal or inter-insurance exchanges, see V.A.T.S. Insurance Code, arts. 19.02, 19.10.

### CHAPTER FOUR—STOCK, STOCKHOLDERS, BY-LAWS, DIRECTORS, OFFICERS, EMPLOYEES

#### Art. 342—402. Stockholders' Meetings—Quorum—Voting

The stockholders of each State bank shall hold one regular meeting each year at the time prescribed in its by-laws, and such special meetings as may be deemed necessary after notice as prescribed in the by-laws. At all stockholders' meetings the owners of a majority of the capital stock, present in person or by proxy, shall constitute a quorum. In the absence of a quorum a stockholders' meeting may be adjourned from time to time without notice to the stockholders. Each stockholder of record shall be entitled to one vote for each share of stock owned by him, which he may cast in person or by proxy duly authorized in writing filed among the records of the bank. Stock owned of record by an estate shall be voted by its executor, administrator, guardian, trustee or personal representative; and stock held in a fiduciary capacity shall be voted by the fiduciary, but stock which is owned or held by the State bank in any such capacity and stock which is acquired by the State bank in any other lawful manner shall not be voted for any purpose and shall not be included in determining whether or not a quorum is present at any annual or special meeting of the stockholders. As amended Acts 1959, 56th Leg., p. 894, ch. 412, § 4.

Emergency. Effective May 30, 1959.

#### Art. 342—404. Directors—Number—Change of Number—Advisory Directors

A State bank shall have not less than five (5) nor more than twenty-five (25) directors, the majority of whom shall be residents of the State of Texas. The number of directors may be changed from time to time within the limits above prescribed, without amendment of the charter, by resolution adopted at any regular meeting of the stockholders or any special meeting of stockholders called for the purpose of electing directors, which resolution shall be spread on the minutes of the meeting, and a certified copy shall be filed with the Commissioner, for which filing no fee shall be charged.

The board of directors with the approval of the stockholders may elect an advisory board of directors in any number designated by resolu-

tion of the stockholders, which advisory directors shall not be required to comply with Article 5 of this Chapter<sup>1</sup> and shall not have the right to vote as directors of the bank. As amended Acts 1959, 56th Leg., p. 894, ch. 412, § 5.

<sup>1</sup> Article 342—405.

#### **Art. 342—406. Directors' Election—Term—Failure to Elect—Vacancy —Failure to Fill Vacancy**

Each State bank shall, at its regular annual meeting of stockholders, or at some adjournment thereof, or at a special meeting of stockholders called for such purpose, elect directors who shall serve until the next regular annual meeting of stockholders and until their successors have been elected and have qualified. If any State bank fails to elect directors within sixty (60) days after its regular annual meeting, the Commissioner may, after ten (10) days' notice by mail, call a meeting of stockholders for the purpose of electing directors, and if the stockholders do not elect directors at the meeting so called, the Commissioner may close the bank and liquidate it pursuant to the provisions of Chapter VIII of this Code.<sup>1</sup> Any vacancy on the board of directors shall be filled by a majority vote of the remaining directors within sixty (60) days from the date the vacancy occurs, provided if the vacancy reduces the number of directors to less than that required by Article 4 of this Chapter,<sup>2</sup> it shall be filled within thirty (30) days from the date it occurs. If any State bank fails to fill a vacancy within the above prescribed time limits, the Commissioner may close the bank and liquidate it pursuant to the provisions of Chapter VIII of this Code. As amended Acts 1959, 56th Leg., p. 894, ch. 412, § 6.

<sup>1</sup> Articles 342—801 to 342—816.

<sup>2</sup> Article 342—404.

Emergency. Effective May 30, 1959.

#### **Art. 342—408. Directors—Meetings—Chairman—Quorum**

The directors of a State bank shall hold at least one regular meeting each month as prescribed in the by-laws. Special meetings may be called in such manner and upon such notice as may be prescribed in the by-laws. The president of the bank shall be a qualified member of the board of directors and shall be the chairman thereof, but the board may designate a director in lieu of the president to be chairman of the board and to perform such duties as may be designated by the board. A majority of the qualified directors shall constitute a quorum. As amended Acts 1959, 56th Leg., p. 894, ch. 412, § 7.

Emergency. Effective May 30, 1959.

### **CHAPTER FIVE—LOANS AND INVESTMENTS**

#### **Art. 342—502. Other Real Estate—Depreciation—Exceptions**

No State bank shall acquire real estate, other than its domicile, except in satisfaction or partial satisfaction of indebtedness, or in the ordinary course of the collection of loans and other obligations owing the bank, or for the use of the bank in future expansion of its banking house. No State bank shall assign an original book value to such real estate in excess of its reasonable value at the time of acquisition, and such real estate shall be depreciated each year ten per cent (10%) of such original book value until charged down to twenty-five per cent (25%) of its original book value; provided that the Commissioner may permit a lesser percentage to be depreciated during any year. If such real estate is acquired for the

use of the bank in future expansion of its banking house, such real estate shall be depreciated each year ten per cent (10%) of its original book value until such time as it is actually improved and occupied as a banking house, after which it shall be depreciated in accordance with the provisions of Article 1 of this Chapter.<sup>1</sup> The original book value of such real estate shall be included in determining whether the State bank has invested an amount in excess of fifty per cent (50%) of its capital and certified surplus in a domicile (including land and building) under the provisions of Article 1 of this Chapter. If such real estate acquired for the use of the bank in future expansion of its banking house is not improved and occupied as a banking house within three (3) years from the date of its acquisition, the bank shall sell or otherwise dispose of such property; provided that the Commissioner may for good cause shown grant an extension of time for a period of one year or more. As amended Acts 1959, 56th Leg., p. 894, ch. 412, § 8.

<sup>1</sup> Article 342—501.

Emergency. Effective May 30, 1959.

#### Art. 342—504. Real Estate Loans—Limitations—Exceptions

Except as provided in Sections 4 through 8 of this Article, no State bank shall make a loan upon security of real estate or invest its funds in obligations secured by real estate unless:

1. The security is a first lien upon such real estate or the loan or investment made by the bank is wholly guaranteed by the Administrator of Veterans Affairs under Title III of the Serviceman's Readjustment Act of 1944,<sup>1</sup> as amended from time to time.

2. The total "net balance" owing upon the indebtedness secured by such lien:

(a) does not exceed fifty per cent (50%) of the appraised value of such real estate;

(b) does not exceed sixty per cent (60%) of the appraised value of such real estate and such loan or obligation provides for uniform monthly, quarterly, semi-annual or annual reductions of principal in such amounts as to retire forty per cent (40%) thereof within five (5) years of the date of the bank's loan or investment; or

(c) does not exceed sixty-six and two-thirds per cent (66 $\frac{2}{3}$ %) of the appraised value of such real estate when such real estate consists of "residential real estate" and such loan provides for repayment in equal monthly installments in such amounts as to retire the same in its entirety, both as to principal and interest in not more than two hundred forty (240) months from the date thereof and further provides for equal monthly deposits during the term thereof in amounts sufficient to pay as they accrue the premiums on fire and tornado insurance and all taxes assessed against the security. The aggregate of loans and investments of the class provided for in this Subsection (c) of Section 2 made by any State bank shall never, without the written consent of the Commissioner, exceed the certified surplus and capital of such bank.

The term "residential real estate" as used in this Subsection (c) of Section 2 shall mean land on which is situated a dwelling of not more than four (4) family units the primary use of which is occupancy as a home.

The term "net balance" as used in this Section 2 shall mean the balance obtained after deducting from any loan or obligation the portion thereof guaranteed by the Administrator of Veterans Affairs under Title III of the Serviceman's Readjustment Act of 1944, as amended from time to time.



3. Such loan or obligation is supported by:

(a) either an attorney's opinion or a mortgagee's title insurance policy;

(b) evidence of payment of all taxes other than taxes for the current year;

(c) a written appraisal of such real estate signed by an appraiser; and

(d) if the improvements situated upon such real estate constitute an appreciable portion of the security, adequate coverage insuring the interest of the bank against loss by fire and tornado.

4. The limitations, restrictions and requirements of Sections 1, 2 and 3 of this Article shall not apply to a loan or obligation insured by the Federal Housing Administration, or to any loan or obligation which the United States of America has unconditionally guaranteed as to payment of both principal and interest through a federal agency or instrumentality, or to security taken to prevent loss on a loan or investment previously made in good faith.

5. Loans made to finance the construction of industrial or commercial buildings and having maturities of not to exceed eighteen (18) months where there is a valid and binding agreement entered into by a financially responsible lender to advance the full amount of the bank's loan upon the completion of the buildings and loans made to finance the construction of residential or farm buildings and having maturities of not to exceed nine (9) months shall not be considered as loans secured by real estate within the meaning of this Article but shall be classed as ordinary commercial loans, provided that such loans shall be secured by a first lien on the real estate upon which the building or buildings are being constructed. No State bank shall invest its funds in, or be liable on, any such loans in an aggregate amount in excess of one hundred per cent (100%) of its actual paid-in and unimpaired capital and unimpaired certified surplus funds.

Such loans or obligations shall be supported by:

(a) either an attorney's opinion, a mortgagee's title insurance policy or a mortgagee's title insurance policy binder;

(b) evidence of payment of all taxes other than taxes for the current year;

(c) a written appraisal of such real estate signed by an appraiser; and

(d) insurance coverage upon the building or buildings under construction in an amount adequate to insure the interest of the bank against loss by fire, tornado and other casualties.

6. Loans made to established industrial or commercial businesses in which the Housing and Home Finance Administrator or the Small Business Administration cooperates or purchases a participation under the provisions of Section 102 or 102a of the Housing Act of 1948, as amended,<sup>2</sup> or of the Small Business Act of 1953,<sup>3</sup> shall not be subject to the requirements, restrictions or limitations of this Article upon loans secured by real estate.

7. Loans made to manufacturing and industrial businesses where the bank looks for repayment out of the operations of the borrower's business, relying primarily on the borrower's general credit standing and forecast of operations, with or without other security, but wishes to take a mortgage on the borrower's real estate as a precaution against contingencies, shall not be considered as real estate loans within the meaning of this Article but shall be classed as ordinary commercial loans.

8. Loans may be made to finance the construction of buildings during a construction period in each case of not to exceed thirty-six (36) months, upon the security of:

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

(a) a purchase contract entered into pursuant to the provisions of the Public Buildings Purchase Contract Act of 1954<sup>4</sup> or the Post Office Department Property Act of 1954,<sup>5</sup> or an assignment thereof irrevocably binding the Administrator of General Services or the Postmaster General to commence payments at a specified date not later than one month from the date of completion and acceptance of the building and to continue such payments at least at annual intervals until the loan has been paid in full, and

(b) a bid and performance bond with one or more financially responsible sureties thereon in favor of the General Services Administration or the Post Office Department, jointly with the lender, without complying with the requirements, restrictions or limitations of this Article concerning loans secured by real estate, even though the lender may hold additional security in the form of a mortgage, deed of trust, title to the premises involved, or other such lien on such premises. As amended Acts 1959, 56th Leg., p. 894, ch. 412, § 9.

<sup>1</sup> See 38 U.S.C.A. § 1801 et seq.

<sup>2</sup> 12 U.S.C.A. §§ 1701g, 1701g—1.

<sup>3</sup> 15 U.S.C.A. § 631 et seq.

<sup>4</sup> 40 U.S.C.A. §§ 356, 357.

<sup>5</sup> 39 U.S.C.A. § 901 et seq.

Emergency. Effective May 30, 1959.

#### Art. 342—507. Limit of Liability of Any One Borrower—Exceptions— Penalty

No state bank shall permit any person or any corporation to become indebted or in any other way liable to it in an amount in excess of twenty-five per cent (25%) of its capital and certified surplus. The phrase "indebted or in any other way liable" shall be construed to include liability as partner or otherwise. The above limitation shall not apply to the following classes of indebtedness or liability:

1. Liability as endorser or guarantor of commercial or business paper discounted by or assigned to the bank by the actual owner thereof, who has acquired it in the ordinary course of business.

2. Indebtedness evidenced by bills of exchange or drafts drawn against actually existing values and secured by a lien upon goods in transit with shippers' order bills of lading or comparable instruments attached.

3. Indebtedness evidenced by notes or other paper secured by liens upon agricultural products, manufactured goods, or other chattels in storage in bonded warehouses or elevators with warehouse or elevator receipts attached, cotton yard tickets, signed by a bonded weigher, when the value of the security is not less than one hundred twenty-five per cent (125%) of the indebtedness, and the bank's interest therein is adequately insured against loss, with insurance policies or certificates of insurance attached.

4. Deposit in a reserve depository, or a Federal Reserve Bank.

5. Indebtedness arising out of the daily transaction of the business of any clearing house association in this State.

6. Bonds and other legally created general obligations of the State of Texas or of any county, city, municipality or political subdivision thereof and indebtedness of the United States of America, the Reconstruction Finance Corporation or other instrumentality or agency of the United States Government.

7. Any portion of any indebtedness which the United States Government, the Reconstruction Finance Corporation or any other agency or instrumentality of the United States Government has unconditionally agreed to purchase or has unconditionally guaranteed as to payment of both principal and interest.

A State bank may permit any person, partnership, association or corporation to become indebted or in any other way liable to it in an amount equal to or less than fifteen per cent (15%) of its capital and certified surplus in addition to any indebtedness or liability of such person, partnership, association or corporation to the bank in an amount not in excess of twenty-five per cent (25%) of its capital and certified surplus, when such additional indebtedness or liability to the bank is secured by bonds or notes of the United States issued since April 24, 1917, certificates of indebtedness of the United States, Treasury bills of the United States, or obligations fully guaranteed both as to principal and interest by the United States, the market value of which security is at all times not less than one hundred twenty per cent (120%) of such indebtedness or liability to the bank.

Any officer, director or employee of a State bank who knowingly violates or participates in the violation of any provision of this Article shall upon conviction be fined not more than Five Thousand Dollars (\$5,000) or confined in the State penitentiary not more than five (5) years, or both. As amended Acts 1959, 56th Leg., p. 894, ch. 412, § 10.

Emergency. Effective May 30, 1959.

## **CHAPTER SIX—SURPLUS, DIVIDENDS, LIABILITIES, UNINVESTED TRUST FUNDS, PREFERENCES, RESERVES, DEBENTURES AND WITHDRAWALS**

### **Art. 342—606. Cash Reserve—Reserve Depositories—Amount Carried**

Every State bank having a capital stock of less than Twenty-five Thousand Dollars (\$25,000) shall at all times maintain a reserve of not less than twenty per cent (20%) of the aggregate amount of its demand deposits and five per cent (5%) of all other deposits, and every State bank having Twenty-five Thousand Dollars (\$25,000) or more capital shall at all times maintain a reserve of not less than fifteen per cent (15%) of its aggregate demand deposits and five per cent (5%) of all other deposits, provided that any member of the Federal Reserve System which maintains the reserves required by that System shall not be deemed to have violated the provisions of this Article. Such reserve shall be kept in the vaults of the bank or on deposit with Federal Reserve banks or with banks incorporated by any state or the United States with not less than Fifty Thousand Dollars (\$50,000) capital approved as reserve depositories by the Commissioner. No State bank shall deposit an amount in excess of twenty per cent (20%) of its capital, certified surplus and deposits in any one reserve depository. As amended Acts 1959, 56th Leg., p. 894, ch. 412, § 11.

Emergency. Effective May 30, 1959.

## **CHAPTER NINE—GENERAL PROVISIONS**

### **Art. 342—903. Branch Banking Prohibited**

No state, national or private bank shall engage in business in more than one place, maintain any branch office, or cash checks or receive deposits except in its own banking house. For purpose of this Article, 'banking house' means the building in whose offices the business of the bank is conducted and which is functionally one place of business, including office facilities whose nearest wall is located within five hundred (500) feet of the nearest wall of the central building and is physically connected

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

to the central building by tunnel, passageway or hallway; providing direct access between the central building and the connected office facility or by pneumatic tube or other similar carrier; provided such office facility must be located within the same city block or within contiguous or adjoining city blocks, or within a block located diagonally across an intersection of two (2) streets from the central building both of which intersecting streets are adjacent to the block occupied by the central building and also the block occupied by the connecting office facility, or adjacent to the same street and within five hundred (500) feet, as above provided. The entire banking house shall for all purposes under the law be considered one integral banking house. As amended Acts 1959, 56th Leg., p. 213, ch. 123, § 1.

Emergency. Effective April 29, 1959.

Section 2 of the amendatory Act of 1959 contained a severability clause.

## TITLE 19—BLUE SKY LAW—SECURITIES

Art.

582—1. Uniform Act for Fiduciary Security Transfers [New].

Art. 581—5. Exempt Transactions

Q. The sales of interests in and under oil, gas or mining leases, fees or titles, or contracts relating thereto, where (1) the total number of sales by any one owner of interests, whether whole, fractional, segregated or undivided in any single oil, gas or mineral lease, fee or title, or contract relating thereto, shall not exceed thirty-five (35) within a period of twelve (12) consecutive months and (2) no use is made of advertisement or public solicitation; provided, however, if such sale or sales are made by an agent for such owner or owners, such agent shall be licensed pursuant to this Act. No oil, gas or mineral unitization or pooling agreement shall be deemed a sale under this Act. Acts 1957, 55th Leg., p. 575, ch. 269, § 5; Acts 1959, 56th Leg., p. 147, ch. 88, § 1.

Emergency. Effective April 23, 1959.

Section 2 of the amendatory Act of 1959 contained a severability clause.

Art. 581—35. Fees

The Commissioner shall charge and collect the following fees and shall daily pay all fees received into the State Treasury:

G (1) For each and every permit or amended permit issued under Section 7A, a fee of one tenth ( $\frac{1}{10}$ ) of one per cent (1%) of the aggregate amount of securities described and proposed to be sold in this State based upon the price at which such security is to be offered to the public.

(2) For the examination of any application for a permit which is denied, abandoned or withdrawn, a fee of one tenth ( $\frac{1}{10}$ ) of one per cent (1%) of the aggregate amount of securities described and sought to be permitted in this State based upon the proposed public offering price. As amended Acts 1959, 56th Leg., p. 982, ch. 457, § 1.

Emergency. Effective May 30, 1959.

M (1) For securities registered by notification or coordination, the fees prescribed in Section 7B or C of this Act<sup>1</sup>;

(2) For the examination of any registration statement filed under Sections 7B or C which, for any reason, does not become effective, a fee of one tenth ( $\frac{1}{10}$ ) of one per cent (1%) of the aggregate amount of securities described and sought to be registered in this State based upon the proposed public offering price. Acts 1957, 55th Leg., p. 575, ch. 269, § 25, as amended Acts 1959, 56th Leg., p. 982, ch. 457, § 1.

<sup>1</sup> Article 581—7.

Emergency. Effective May 30, 1959.

Section 2 of the amendatory Act of 1959 contained a severability clause.

Art. 582—1. Uniform Act for Fiduciary Security Transfers

Section 1. In this Act, unless the context otherwise requires:

(a) "Assignment" includes any written stock power, bond power, bill of sale, deed, declaration of trust or other instrument of transfer.

(b) "Claim of beneficial interest" includes a claim of any interest by a decedent's legatee, distributee, heir or creditor, a beneficiary under a

trust, a ward, a beneficial owner of a security registered in the name of a nominee, or a minor owner of a security registered in the name of a custodian, or a claim of any similar interest, whether the claim is asserted by the claimant or by a fiduciary or by any other authorized person on his behalf, and includes a claim that the transfer would be in breach of fiduciary duties.

(c) "Corporation" means a private or public corporation, association or trust issuing a security.

(d) "Fiduciary" means an executor, administrator, trustee, guardian, committee, conservator, curator, tutor, custodian or nominee.

(e) "Person" includes an individual, a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(f) "Security" includes any share of stock, bond, debenture, note or other security issued by a corporation which is registered as to ownership on the books of the corporation.

(g) "Transfer" means a change on the books of a corporation in the registered ownership of a security.

(h) "Transfer agent" means a person employed or authorized by a corporation to transfer securities issued by the corporation.

#### Registration in the Name of a Fiduciary

Sec. 2. A corporation or transfer agent registering a security in the name of a person, who is a fiduciary or who is described as a fiduciary, is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship, and thereafter the corporation and its transfer agent may assume without inquiry that the newly registered owner continues to be the fiduciary until the corporation or transfer agent receives written notice that the fiduciary is no longer acting as such with respect to the particular security.

#### Assignment by a Fiduciary

Sec. 3. Except as otherwise provided in this Act, a corporation or transfer agent making a transfer of a security pursuant to an assignment by a fiduciary:

(a) may assume without inquiry that the assignment, even though to the fiduciary himself or to his nominee, is within his authority and capacity and is not in breach of his fiduciary duties;

(b) may assume without inquiry that the fiduciary has complied with any controlling instrument and with the law of the jurisdiction governing the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and

(c) is not charged with notice of and is not bound to obtain or examine any court record or any recorded or unrecorded document relating to the fiduciary relationship or the assignment.

#### Guarantee of signature

Sec. 3a. The signature on a transfer of any security coming within the terms of this Act shall be guaranteed by an officer of a bank which is a member of the Federal Reserve System.

#### Evidence of Appointment or Incumbency

Sec. 4. A corporation or transfer agent making a transfer pursuant to an assignment by a fiduciary who is not the registered owner shall obtain the following evidence of appointment or incumbency:

(a) In the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer thereof and dated within sixty days before the transfer; or

(b) In any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the corporation or transfer agent to be responsible or, in the absence of such a document or certificate, other evidence reasonably deemed by the corporation or transfer agent to be appropriate. Corporations and transfer agents may adopt standards with respect to evidence of appointment or incumbency under this subsection (b) provided such standards are not manifestly unreasonable. Neither the corporation nor transfer agent is charged with notice of the contents of any document obtained pursuant to this subsection (b) except to the extent that the contents relate directly to the appointment or incumbency.

#### Adverse Claims

Sec. 5. (a) A person asserting a claim of beneficial interest adverse to the transfer of a security pursuant to an assignment by a fiduciary may give the corporation or transfer agent written notice of the claim. The corporation or transfer agent is not put on notice unless the written notice identifies the claimant, the registered owner and the issue of which the security is a part, provides an address for communications directed to the claimant and is received before the transfer. Nothing in this Act relieves the corporation or transfer agent of any liability for making or refusing to make the transfer after it is so put on notice, unless it proceeds in the manner authorized in subsection (b).

(b) As soon as practicable after the presentation of a security for transfer pursuant to an assignment by a fiduciary, a corporation or transfer agent which has received notice of a claim of beneficial interest adverse to the transfer may send notice of the presentation by registered or certified mail to the claimant at the address given by him. If the corporation or transfer agent so mails such a notice it shall withhold the transfer for thirty (30) days after the mailing and shall then make the transfer unless restrained by a court order.

#### Non-Liability of Corporation and Transfer Agent

Sec. 6. A corporation or transfer agent incurs no liability to any person by making a transfer or otherwise acting in a manner authorized by this Act.

#### Non-Liability of Third Persons

Sec. 7. (a) No person who participates in the acquisition, disposition, assignment or transfer of a security by or to a fiduciary including a person who guarantees the signature of the fiduciary is liable for participation in any breach of fiduciary duty by reason of failure to inquire whether the transaction involves such a breach unless it is shown that he acted with actual knowledge that the proceeds of the transaction were being or were to be used wrongfully for the individual benefit of the fiduciary or that the transaction was otherwise in breach of duty.

(b) If a corporation or transfer agent makes a transfer pursuant to an assignment by a fiduciary, a person who guaranteed the signature of the fiduciary is not liable on the guarantee to any person to whom the corporation or transfer agent by reason of this Act incurs no liability.

(c) This Section does not impose any liability upon the corporation or its transfer agent.

#### Territorial Application

Sec. 8. (a) The rights and duties of a corporation and its transfer agents in registering a security in the name of a fiduciary or in making a transfer of a security pursuant to an assignment by a fiduciary are governed by the law of the jurisdiction under whose laws the corporation is organized.

(b) This Act applies to the rights and duties of a person other than the corporation and its transfer agents with regard to acts and omissions in this state in connection with the acquisition, disposition, assignment or transfer of a security by or to a fiduciary and of a person who guarantees in this state the signature of a fiduciary in connection with such a transaction.

#### Tax Obligations

Sec. 9. This Act does not affect any obligation of a corporation or transfer agent with respect to estate, inheritance, succession or other taxes imposed by the laws of this state.

#### Uniformity of Interpretation

Sec. 10. This Act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

#### Short Title

Sec. 11. This Act may be cited as the Uniform Act for Fiduciary Security Transfers. Acts 1959, 56th Leg., p. 784, ch. 358.

Effective Jan. 1, 1960.

Section 12 of the Act of 1959 provided that the Act shall take effect Jan. 1, 1960, section 13 repealed all conflicting laws and parts of laws to the extent of such conflict.

Uniform Stock Transfer Act, see art. 1358—1.

#### Title of Act:

An Act relating to the rights, duties, and liabilities of issuers of securities, transfer agents, and other parties with respect to fiduciary security transfers; providing an effective date; repealing laws in conflict; and declaring an emergency. Acts 1959, 56th Leg., p. 784, ch. 358.



**TITLE 20—BOARD OF CONTROL**

**CHAPTER FOUR A—STATE BUILDING COMMISSION [NEW]**

Art.

678m—4. Location and purchase of land for state office buildings and parking lots [New].

**Art. 678m—4. Location and purchase of land for state office buildings and parking lots**

Section 1. The State Building Commission is authorized and empowered to select and purchase sites in any of the cities of Texas on which to construct State Office Buildings and adjoining parking lots where such are deemed necessary to house State Departments and Agencies in said cities, and is further authorized and empowered to plan, construct and initially equip State Office Buildings together with adjoining parking space on each such site selected and purchased.

Sec. 2. The State Building Commission is further authorized and empowered to enter into lease agreements with Departments, Commissions, Boards, Agencies and other instrumentalities of the State of Texas, political subdivisions of the State of Texas, and the Federal Government or its instrumentalities concerning the space in the office building which is the subject of this Act. Providing, however, that the State Building Commission is specifically denied the power to lease space in said building to individuals, private corporations or associations, partnerships or any other private interests. Acts 1959, 56th Leg., p. 777, ch. 354, § 1.

Effective 90 days after May 12, 1959, date of adjournment.

Section 3 of Act of 1959 repealed all conflicting laws and parts of laws to the extent

of such conflict. Section 4 contained a severability clause.

**CHAPTER FIVE—DIVISION OF DESIGN AND CONSTRUCTION**

**Arts. 684–687. Repealed. Acts 1959, 56th Leg., p. 813, ch. 370, § 1. Eff. June 1, 1959.**

## TITLE 20A—BOARD AND DEPARTMENT OF PUBLIC WELFARE

### Art. 695c. Public Welfare Act of 1941

#### Funds created; State Treasurer custodian

Sec. 27. (1) There is hereby created in the Treasury a special fund to be known as the "Disabled Assistance Fund." For the purposes of carrying out the provisions of this Act, the Old Age Assistance Fund the Blind Assistance Fund, and the Children Assistance Fund as provided for in House Bill No. 8, Acts of the 47th Legislature, Regular Session,<sup>1</sup> and the "Disabled Assistance Fund" created herein, are hereby made separate accounts of the "State Department of Public Welfare Fund." Provided, that all moneys in the separate accounts of the State Department of Public Welfare Fund shall be expended for the purposes of carrying out the provisions of this Act, and for the purposes for which said separate accounts were created or appropriated, and for such other purposes as the Legislature by statutory enactment may direct. As amended Acts 1957, 55th Leg., p. 672, ch. 284, § 2; Acts 1959, 56th Leg., p. 259, ch. 150, § 2.

<sup>1</sup> Article 7083a.

Emergency. Effective May 8, 1959.

Sections 1, 3-5 of Acts 1959, 56th Leg., p. 259, ch. 150 created a temporary separate fund known as the Department of Corrections Special Fund and provided for appropriations and expenditures of moneys and a termination date of such fund.

#### Issuance of duplicate assistance warrants

Sec. 29-A. If a warrant has been issued by the Comptroller in payment of assistance as provided under this Act, and if the claimant entitled to receive such warrant has lost or loses, or for any reason failed or fails to receive such warrant after such warrant is or has been issued by the Comptroller, and upon satisfactory proof of such, the Comptroller may issue to the claimant a duplicate warrant as provided for in Article 4365, Revised Civil Statutes of Texas, 1925, as amended by House Bill No. 519, Page 576, General and Special Laws of the State of Texas, Fifty-third Legislature, Regular Session, 1953, but in no event shall a duplicate warrant be issued after one year from the date of the original warrant. Added Acts 1959, 56th Leg., p. 882, ch. 405, § 1.

Emergency. Effective May 30, 1959.

Section 2 of the amendatory Act of 1959 laws to the extent of such conflict, section repealed all conflicting laws and parts of 3 contained a severability clause.

## TITLE 22—BONDS—COUNTY, MUNICIPAL, ETC.

## CHAPTER ONE—GENERAL PROVISIONS AND REGULATIONS

Art.

717m. Declaratory judgment; authority to issue securities; validity of organization and boundaries, assessments and taxes, securities [New].

Art. 717d. Validating county bonds for road construction and tax levies

Validation of road bonds, see art. 752y—5.

Art. 717m. Declaratory judgment; authority to issue securities; validity of organization and boundaries, assessments and taxes, securities

In rem proceeding; filing of petition; venue; parties

Section 1. Any county, municipality, taxing district or other political district or subdivision, commission, authority, department or other public agency of the state (hereinafter called the "Issuer") authorized by law to borrow money and issue bonds, notes or other evidences of indebtedness whether payable from taxes, revenues, or both taxes and revenues, may, prior to the delivery to the purchaser of any particular issue of bonds, notes or other evidences of indebtedness which it proposes to issue (hereinafter called "the Securities"), institute a proceeding in rem in district court, by filing a petition as hereinafter provided, for the purpose of obtaining a declaratory judgment as to authority of the Issuer to issue the Securities and as to the legality of all proceedings taken and/or proposed to be taken in connection therewith (including, in proper cases, the validity of the organization or boundaries of Issuer, any assessments of taxes levied or to be levied, and the lien of such taxes, the levy of rates, charges, or tolls, and of proceedings or other remedies for the collection of such taxes, rates, charges or tolls), and as to the validity of the Securities to be issued. Such petition may be filed in any District Court of the county in which the Issuer may be situated (or if the Issuer is situated in more than one county, in the county wherein the Issuer maintains its principal office), as a class action against the taxpayers, property owners and citizens of such Issuer, including non-residents owning property or subject to taxation therein, and all other persons interested in or affected by the issuance of the Securities.

Contents of petition

Sec. 2. The petition for declaratory judgment in such cases shall briefly set out, by proper allegations, references or exhibits, the petitioner's authority for issuing the Securities, the holding of an election and the results thereof where an election is required, the ordinance, resolution or other act or proceeding authorizing the issuance of such Securities and the minutes relating to adoption thereof, all other essential proceedings had or taken and/or proposed to be taken in connection therewith, the amount of the Securities to be issued, the rate of interest or maximum rate of interest they are to bear, and, in case it is desired to adjudicate the organization or validity of the Issuer, the authority for and proceedings had in the creation of the Issuer; the consideration to

be received by the Issuer for the Securities, the county or counties in which the proceeds of the Securities, or any part thereof, are to be expended, and all other pertinent matters.

**Order to appear; appearance by attorney general; procedure; records of issuer open to inspection**

Sec. 3. The judge of the District Court wherein the petition is filed, shall, upon the filing and presentation thereof, make and issue an order in general terms in the form of a notice directed to "all property owners, taxpayers, citizens and others having or claiming any right, title or interest in any property or funds to be affected by the issuance of the Securities or affected in any way thereby," requiring, in general terms and without naming them, all such persons and the Attorney General of Texas to appear at or before 10 o'clock A.M. on the first Monday after the expiration of forty-two (42) days from the date of issue of said order, and show cause why the prayers of the petition should not be granted and the proceedings and the Securities validated and confirmed as therein prayed. A copy of the above mentioned petition, together with all exhibits attached, and a copy of said order shall be served upon the Attorney General at least twenty (20) days before the time fixed in said order for hearing as aforesaid; provided, that the Attorney General may waive such service when he has been furnished a certified copy of such petition, order and a full transcript of the proceedings relating to issuance of the Securities. The Attorney General shall carefully examine the petition and if it appears, or there is reason to believe, that the petition is defective, insufficient or untrue, or if in his opinion, the issuance of the Securities has not been duly authorized, defense shall be made thereto as he may deem proper. Such records and proceedings shall be open to inspection at reasonable times to any party to such suit. Any officer, agent or employee having charge, possession, custody or control of any of the books, papers or records of the Issuer shall, on demand of the Attorney General, exhibit for examination such books, papers or records and shall, without cost, furnish duly authenticated copies thereof, which pertain to the proceedings for the issuance of the Securities or which may affect the legality of the same, as may be demanded of him. It is specifically provided that if the validity of bonds or warrants or the security for the payment of either of them is not involved in the litigation, the Attorney General shall so allege and upon a finding by the court to this effect, the Attorney General may be dismissed as a party and the court shall proceed to a final determination of the cause. The Issuer shall pay the mileage and travel expenses of the Attorney General or his assistant in the same amount as is allowable by the state to such officials for travel on other official business; the claim for such expenses shall be filed in duplicate with the clerk of the court in which the proceeding is pending, and shall be taxed as costs against the petitioner.

**Injunctions against actions contesting validity of organizational proceedings, etc.; joint hearing; consolidation of proceedings**

Sec. 4. Upon motion of the petitioner, whether before or after the date set for hearing as provided in Section 3, the judge may enjoin the commencement by any person of any other action or proceeding contesting the validity of organizational proceedings of petitioner, or the validity of the Securities described in the petition, or the validity of the taxes, assessments, tolls, rates or other levies authorized to be imposed or made for the payment of such Securities or the interest thereon, or the validity of any pledge of revenues, or property to secure such pay-

ment, and shall order a joint hearing or trial before him of all such issues then pending in any action or proceeding in any court in the state, and may order all such actions or proceedings consolidated with the suit for declaratory judgment pending before him as herein authorized, and may make such orders as may be necessary or proper to affect such consolidation and as may tend to avoid unnecessary costs or delays or multiplicity of suits, and all such interlocutory orders shall not be appealable.

**Publication of order; persons considered parties defendant**

Sec. 5. Prior to the date set for hearing as provided in Section 3, the clerk of the court wherein said petition is filed, shall cause a copy of said order to be published in a newspaper of general circulation, in the county wherein the petitioner is situated or, if the petitioner lies or functions in more than one county, then in each of such counties once in each of four consecutive calendar weeks; such publication to be made in each instance upon any business day of the week, but the publication in the first calendar week in each county to be not less than twenty-eight (28) days prior to the date set for hearing. By the publication of said order, all property owners, taxpayers, citizens or others having or claiming any right, title or interest in or against the petitioner or property subject to taxation thereby or otherwise affected by or interested in the issuance of the Securities described in the petition, shall be considered as and are made parties defendant to said proceedings, and the court shall have jurisdiction of them to the same extent as if individually named as defendants in said petition and personally served with process in the cause.

In the case of proceedings hereunder to adjudicate the validity of the Securities of any state agency, commission or department, the order shall be published in the manner herein provided in a newspaper of general circulation in Travis County, Texas.

**Additional named parties; hearing; determination; decree**

Sec. 6. Any property owner, taxpayer, citizen or person affected by or interested in the issuance of the Securities may become a named party to said proceedings by pleading to the petition on or before the time set for hearing as provided in Section 3, or thereafter by intervention upon leave of court. At or after the time, and at place designated in the order for hearing, the judge shall proceed to hear and determine all questions of law and fact in said proceedings and may make such orders as to the proceedings and such adjournments as will enable him properly to try and determine the same and to render a final decree therein with the least possible delay.

**Appeals; priority; review by writ of error**

Sec. 7. Any party to the cause, whether petitioner, defendant or intervenor or otherwise, dissatisfied with the final decree may appeal therefrom to the Court of Civil Appeals within twenty (20) days after the entry of such decree. Such appeal shall take priority over all other civil cases pending in said court except habeas corpus. The Supreme Court shall have authority to review by writ of error questions of law arising out of final judgments or decrees of the Court of Civil Appeals in such cases, in the manner, time and form applicable in other civil causes wherein the decision of Courts of Civil Appeals are not final.

**Binding effect of decree; permanent injunction against actions contesting validity of bonds, notes, etc.**

Sec. 8. In the event the decree of the District Court determines that the Issuer has authority to issue the Securities for the consideration and upon the terms set forth in the petition for declaratory judgment hereunder, and adjudicates the legality of all proceedings taken and/or proposed to be taken in connection therewith, and no appeal is taken within the time above prescribed, or if taken and the decree of the District Court is affirmed, such decree shall, as to all matters adjudicated, be forever binding and conclusive, against the petitioner and all other parties to the cause, whether mentioned in and served with said notice of the proceedings, or included in the description "all property owners, taxpayers, citizens and others having or claiming any right, title or interest in any properties or funds to be affected by the issuance of the Securities or affected in any way thereby," and shall constitute a permanent injunction against the institution by any person of any action or proceeding contesting the validity of the bonds, notes or other evidences of indebtedness described in the petition, or the validity of provisions made for the payment of the same or of interest thereon.

**Recording decree**

Sec. 9. The decree shall be recorded in the same manner as other decrees or judgments in each county in which notice of the hearing is required to be published by Section 5.

**Notation as to validity of bonds and other evidences of indebtedness**

Sec. 10. Bonds, notes or other evidences of indebtedness adjudged valid as herein provided may have stamped or written thereon the following statement:

"Validated and confirmed by a decree of the ——— court (specifying the date when such decree was rendered and the court in which it was rendered and the style and number of the cause in said court) which perpetually enjoins the institution of any suit, action or proceeding involving the validity of this security or the provision made for the payment of the principal and interest thereof."

Said certificate may be signed by the clerk, secretary or other official of the Issuer; said signature may be by facsimile if authorized by the governing body of the Issuer.

**Filing copy of decree with Comptroller of Public Accounts; registration of securities**

Sec. 11. Where the securities are required by other statutes to be registered by the Comptroller of Public Accounts before the same may be issued, a certified copy of the proceedings authorizing the issuance of the securities, and a certified copy of the final judgment or decree in a proceeding hereunder, adjudicating the validity of the securities, shall be filed with the Comptroller; he shall thereupon register the securities in the manner provided by law.

**Costs**

Sec. 12. The cost in each proceeding under this Act shall be paid by the petitioner except in cases where a taxpayer, citizen or other person may appear and contest the proceeding or intervene therein, the court may tax whole or any part of the cost against such party or parties

as shall be equitable and just; provided, that in no event shall any costs be taxed against the Attorney General.

#### Cumulative effect of procedure

Sec. 13. The procedure prescribed herein is cumulative of all other methods permitted under law for approval and validation of securities and shall not have the effect of repealing any such laws. The method prescribed in this Act may be invoked only by the Issuer and when so used may be employed concurrently with, or after use of other means of approval or validation; nothing in this Act shall be construed as varying venue in, or the procedures prescribed by law for maintaining actions contesting any election. This Act shall not have the effect of repealing the existing right of an Issuer to apply for and of the Supreme Court to issue writs of mandamus to the Attorney General for the approval of bonds, in appropriate cases. Acts 1959, 56th Leg., p. 690, ch. 316.

Emergency. Effective May 30, 1959.

Approval of bonds by attorney, see arts. 702, 709, 752y, 1175(10) and 4398.

### CHAPTER THREE—PUBLIC ROAD BONDS

#### 1. COUNTY AND DISTRICT BONDS

Art.

752y—5. Validation of road bonds [New].

#### 1. COUNTY AND DISTRICT BONDS

Art. 752y—5. Validation of road bonds

Section 1. All road bonds heretofore voted and authorized under the provisions of Article 3, Section 52 of the Constitution of Texas by a two-thirds ( $\frac{2}{3}$ ) majority vote of the resident qualified property taxpaying voters voting at an election held for such purpose who had duly rendered their property for taxation, and all proceedings had in connection therewith, including the petition for election, the order of election, the giving of notice of such election, the holding of the election and declaring the results thereof, and the order authorizing the issuance and levying of a tax in payment of such bonds are hereby in all things validated, and such bonds, when approved by the Attorney General of Texas, registered by the Comptroller of Public Accounts, and delivered to the purchaser shall be held to be general direct and binding obligations of the political subdivision or road district issuing the same, and shall be incontestable except for fraud or forgery. All such bonds which have heretofore been approved by the Attorney General, registered by the Comptroller of Public Accounts, and delivered to the purchaser, are hereby in all things validated and shall be held to be general direct and binding obligations of the political subdivision or road district which issued the same and shall be incontestable except for fraud or forgery.

Sec. 2. The provisions of this Act shall not apply to any political subdivision or road district which is now or has been involved in litigation questioning the validity of its road bonds if the litigation is ultimately determined against the validity of such bonds. Acts 1959, 56th Leg., p. 476, ch. 205.

Emergency. Effective May 21, 1959.

Validating county bonds for road construction and tax levies, see art. 717d.

#### 4. GENERAL PROVISIONS

##### Art. 784a. Cancellation or revocation of unsold road bonds

###### Refund to taxpayers

Sec. 4. After deducting the compensation of the Tax Assessor, Tax Collector and County Treasurer, and any other claims properly chargeable against such taxes, the unexpended part of all taxes that have been collected, with a view to the sale of such bonds as destroyed, shall be refunded to the taxpayers ratably upon order of the Commissioners Court. The County Treasurer shall take and file proper receipts for all funds so refunded. Provided that in the event there shall remain an unclaimed surplus of such taxes, after a period of twenty (20) years and after a diligent effort has been made to return such unclaimed surplus, said surplus may be used by the county, political subdivision of the county, or any local district that has been or may hereafter be created by any General or Special Law, for the purpose of the maintenance, operation and improvement of macadamized, graveled or paved roads as may be determined by the Commissioners Court of any county or the officials of any political subdivision of a county or any said road district. As amended Acts 1959, 56th Leg., p. 532, ch. 236, § 1.

Emergency. Effective May 28, 1959.

#### CHAPTER SEVEN—MUNICIPAL BONDS

Art.  
835n. Issuance of bonds for fire fighting equipment in cities of less than 5,000 population [New].

##### Art. 835c. Hospital sites in cities and counties

Donations of unimproved land to counties for use by juvenile boards, see art. 1182d—1.

##### Art. 835n. Issuance of bonds for fire fighting equipment in cities of less than 5,000 population

Cities and towns of less than five thousand (5,000) population are authorized to issue negotiable bonds for the purpose of providing money to purchase fire fighting equipment. Chapter 1, Title 22, Revised Civil Statutes of Texas, as amended, relating to the voting and issuance of bonds, the approval thereof by the Attorney General, and registration by the Comptroller of Public Accounts, shall be applicable to bonds issued under this law. Acts 1959, 56th Leg., 1st C.S., p. 18, ch. 5, § 1.

Emergency. Effective June 24, 1959.

###### Title of Act:

An Act authorizing cities and towns of less than five thousand (5,000) population

to issue negotiable bonds to provide money to purchase fire fighting equipment, enacting other provisions related to the subject; and declaring an emergency. Acts 1959, 56th Leg., 1st C.S., p. 18, ch. 5.



## TITLE 28—CITIES, TOWNS AND VILLAGES

## CHAPTER ONE—CITIES AND TOWNS

Art. 966f.	Validation of incorporation of cities and towns of 5,000 or less [New].	Art. 973b.	Validation of disannexation or discontinuance of territory; cities of 5,000 or less [New].
966g.	Cities of 5,000 or less, validation of incorporation; areas and boundary lines; governmental proceedings and acts [New].		

**Art. 966f.** Validation of incorporation of cities and towns of 5,000 or less

Section 1. All cities and towns, in this state, of five thousand (5,000) inhabitants or less, heretofore incorporated or attempted to be incorporated under the General Laws of Texas, whether under the aldermanic form of government or the commission form of government, and which have functioned as incorporated cities and towns since the date of such incorporation or attempted incorporation, are hereby in all respects validated as of the date of such incorporation or attempted incorporation; and the incorporation of such cities and towns shall not be held invalid by reason of the fact that the election proceedings or other incorporation proceedings may not have been in accordance with law.

Sec. 2. The boundary lines of all such cities and towns, including both the boundary lines covered by the original incorporation proceedings and by any subsequent extension thereof, are hereby in all things validated.

Sec. 3. All governmental proceedings performed by the governing bodies of such cities and towns and all officers thereof since their incorporation, or attempted incorporation, are hereby in all respects validated as of the respective date of such proceedings.

Sec. 4. The provisions of this Act shall not apply to any city or town in a county having a population of three hundred and fifty thousand (350,000) or more according to the last preceding Federal Census which city or town is involved in litigation on the effective date of this Act as originally enacted or on the effective date of this Section as amended by Senate Bill No. 448, Acts of the 56th Legislature, Regular Session, questioning the legality of the incorporation, annexations and/or extensions of boundaries by any such cities and towns. Acts 1959, 56th Leg., p. 79, ch. 38, as amended Acts 1959, 56th Leg., p. 842, ch. 380, § 1.

Emergency. Effective March 26, 1959 and June 1, 1959.

**Art. 966g.** Cities of 5000 or less, validation of incorporation; areas and boundary lines; governmental proceedings and acts

Section 1. All cities and towns in Texas of five thousand (5,000) inhabitants or less, heretofore incorporated, or attempted to be incorporated under any of the terms and provisions of the General Laws of the State of Texas, whether under the aldermanic or commission form of government, and which are now functioning or attempting to function as incorporated cities or towns, are hereby in all respects validated as of the date of such incorporation, or attempted incorporation; and the incorporation of such cities and towns shall not be held invalid by reason of

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

the fact that the election proceedings or other incorporation proceedings may not have been in accordance with law, or by reason of a failure to properly define the limits of said city or town.

Sec. 2. All cities and towns in Texas of five thousand (5,000) inhabitants or less, heretofore incorporated, or attempted to be incorporated under any of the terms and provisions of the General Laws of the State of Texas, whether under the aldermanic or commission form of government, which have attempted to extend the corporate limits of such city or town, and have passed an ordinance describing the territory annexed and have caused a certified copy of such ordinance to be recorded in the Deed Records of the County in which such city or town is situated, all actions, elections and proceedings had or passed in reference thereto or in connection therewith, are hereby in all respects validated as of the date of such attempted annexation, and such extension of the corporate limits of such cities and towns shall not be held invalid by reason of the fact that the election proceedings or other proceedings had in connection with such annexation may not have been in accordance with law.

Sec. 3. The areas and boundary lines of all such cities and towns affected by this Act, including both the boundary lines covered by the original incorporation proceedings and by any subsequent extension thereof are in all things validated and the incorporation of such cities and towns or any subsequent extension of the corporate limits of such cities and towns shall not be held invalid because of the inclusion in such limits of more territory than is expressly authorized in Article 971 of the Revised Civil Statutes of the State of Texas of 1925, or by reason of the inclusion in the corporate area of territory other than that which is intended to be used for strictly town purposes.

Sec. 4. All governmental proceedings and acts performed by the governing bodies of such cities and towns and all officers thereof since their incorporation, or attempted incorporation, are hereby in all respects validated as of the respective date of such proceedings and acts.

Sec. 5. The provisions of this Act shall not apply to any city or town now involved in litigation questioning the legality of the incorporation or extension of boundaries or any of the acts or proceedings hereby validated if such litigation is ultimately determined against the legality thereof. Acts 1959, 56th Leg., 3rd C.S., p. 430, ch. 19.

Emergency. Effective Aug. 12, 1959.

Validation of incorporation of cities of 5,000 or less, see also, arts. 974c—1, 974d—2, 974d—4.

#### Art. 973b. Validation of disannexation or discontinuance of territory; cities of 5,000 or less

Section 1. This Act shall apply to all cities and towns incorporated under the General Laws of this state having a population of five thousand (5,000) inhabitants or less at the time of the passage of any ordinance by the city council, aldermen or other governing officials of any such city or town, whether incorporated under the aldermanic form of government or the commission form of government, disannexing or discontinuing or attempting to disannex or discontinue any territory, revoking previous ordinances or previous attempts to annex territory, or discontinuing or attempting to discontinue any territory as a part of any such city or town.

Sec. 2. Ordinances wherein or whereby a city or town coming under the provisions of this Act has attempted to revoke or cancel an ordinance previously adopted annexing territory as a part of said city or town, or to

discontinue territory as a part of said city or town, and all actions, resolutions, petitions, ordinances, proceedings, contracts, held, made, or passed in reference thereto, or pursuant thereto and the boundaries of any such city or town coming within the provisions of this Act after the discontinuance or attempted discontinuance of any such territory are hereby ratified, validated and confirmed, although said city or town after the discontinuance or attempted discontinuance such territory or part of said city or town is separated into two or more parcels or areas, as full and completely as if said actions had been taken and happened under legislative authority previously given.

Sec. 3. Areas and boundaries of all such cities and towns affected by this Act as the same have been reduced or attempted to be reduced by discontinuance or attempted discontinuance of territory or any other action, are hereby in all things ratified, validated and confirmed.

Sec. 4. All ordinances, resolutions and other municipal and governmental proceedings adopted by or performed by the governing bodies of such cities and towns and all officers thereof disannexing, discontinuing or attempting to disannex or discontinue any such territory are hereby in all respects validated as of the respective date of such ordinances, resolutions, proceedings and acts.

Sec. 5. The provisions of this Act shall not apply to any city or town now involved in litigation questioning the legality of any disannexation, attempted disannexation, or attempted discontinuance of any territory as a part of such city or town. Acts 1959, 56th Leg., 2nd C.S., p. 89, ch. 6.

Emergency. Effective July 13, 1959.

Discontinuing territory, see art. 1266.

#### CHAPTER FOUR—THE CITY COUNCIL

Art.

1015k. Regulation of rendering plants  
[New].

##### Art. 1011a. Grant of power for zoning

For the purpose of promoting health, safety, morals, and for the protection and preservation of places and areas of historical and cultural importance and significance, or the general welfare of the community, the legislative body of cities and incorporated villages is hereby empowered to regulate and restrict the height, number of stories, and size of buildings, and other structures, the percentage of lot that may be occupied, the size of the yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purpose; and, in the case of designated places and areas of historic and cultural importance, to regulate and restrict the construction, alteration, reconstruction, or razing of buildings and other structures. As amended Acts 1959, 56th Leg., p. 883, ch. 406, § 1.

Emergency. Effective May 30, 1959.

##### Art. 1011g. Board of adjustment

Such local legislative body may provide for the appointment of a Board of Adjustment, and in the regulations and restrictions adopted pursuant to the authority of this Act may provide that the said Board of Adjustment may, in appropriate cases and subject to appropriate con-

ditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purpose and intent and in accordance with general or specific rules therein contained.

The Board of Adjustment shall consist of five (5) members, each to be appointed for a term of two (2) years and removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. Provided, however, that the governing body of any city may, by charter provision or ordinance, provide for the appointment of two (2) alternate members of the Board of Adjustment who shall serve in the absence of one or more regular members when requested to do so by the Mayor or City Manager, as the case may be, so that all cases to be heard by the Board of Adjustment will always be heard by a minimum number of five (5) members. These alternate members, when appointed, shall serve for the same period as the regular members and any vacancies shall be filled in the same manner and shall be subject to removal as the regular members.

The Board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this Act. Meetings of the Board shall be held at the call of the chairman and at such other times as the Board may determine. Such chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record.

Appeals to the Board of Adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the Board, by filing with the officer from whom the appeal is taken and with the Board of Adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown.

The Board of Adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

The Board of Adjustment shall have the following powers:

1. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this Act or of any ordinance adopted pursuant thereto.

2. To hear and decide special exceptions to the terms of the ordinance upon which such Board is required to pass under such ordinance.

3. To authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done.

In exercising the above mentioned powers such Board may, in conformity with the provisions of this Act, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

The concurring vote of four (4) members of the Board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance, or to effect any variation in such ordinance.

Any person or persons, jointly or severally, aggrieved by any decision of the Board of Adjustment, or any taxpayer, or any officer, department, board or bureau of the municipality, may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within ten (10) days after the filing of the decision in the office of the Board.

Upon presentation of such petition the court may allow a writ of certiorari directed to the Board of Adjustment to review such decision of the Board of Adjustment and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten (10) days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the Board and on due cause shown, grant a restraining order.

The Board of Adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm wholly or partly, or may modify the decision brought up for review.

Costs shall not be allowed against the Board unless it shall appear to the court that it acted with gross negligence, or in bad faith, or with malice in making the decision appealed from.

All issues in any proceeding under this Section shall have preference over all other civil actions and proceedings. As amended Acts 1959, 56th Leg., p. 545, ch. 244, § 1.

Emergency. Effective May 26, 1959.

**Art. 1015. Other powers**

Regulation of rendering plants, see art. 1015k.

**Art. 1015k. Regulation of rendering plants**

For the purpose of protecting its residents from health hazards arising from unsanitary conditions which may exist in conjunction with certain industrial establishments, any city, town or village in this State shall have the power by the enactment of the necessary ordinances to regulate the equipment and mode of operation of rendering plants within the city limits or within one (1) mile from the city limits. Acts 1959, 56th Leg., p. 586, ch. 269, § 1.

Emergency. Effective May 26, 1959.

Minimum standards of sanitation, and health protection measures, see art. 4477—1.

Power of city council to regulate unclean establishments, see art. 1015(8, 9).

**Title of Act:**

An Act allowing cities to regulate rendering plants within the city limits or within one (1) mile thereof; and declaring an emergency. Acts 1959, 56th Leg., p. 586, ch. 269.

**CHAPTER FIVE—TAXATION****Art. 1066b. Assessor, collector and equalization board acting for included municipality or district****Ordinance or resolution; valuation; Board of Equalization**

Section 1. Any incorporated city, town or village, independent school district, drainage district, water control and improvement district, water improvement district, navigation district, road district, or any other municipality or district in the State of Texas, located entirely or partly within the boundaries of another municipality or district, is hereby empowered, to authorize, by ordinance or resolution, the Tax Assessor, Board of Equalization and Tax Collector of the municipality in which it is located, entirely or partly, to act as Tax Assessor, Board of Equalization and Tax Collector respectively for the municipality or district so availing itself of the services of said officers and Board of Equalization.

The property in said municipality or district utilizing the services of such Assessor, Board of Equalization and Collector shall be assessed at not more than the value for which it is assessed for taxing purposes by the municipality or district the services of whose officers and Board of Equalization are being utilized.

When the ordinance or resolution is passed making available their services, said Assessor shall assess the taxes for and perform the duties of Tax Assessor for the municipality or district so availing itself of his services; the said Board of Equalization shall act as and perform the duties of a Board of Equalization for said municipality or district so availing itself of its services, and said Collector shall collect the taxes and assessments for, and turn over as soon as collected to the depository of said municipality or district or to such other authority as is authorized to receive such taxes and assessments, all taxes or money, so collected, and shall perform the duties of Tax Collector of said municipality or district so availing itself of his services.

In all matters pertaining to such assessments and collections the said Tax Assessor, Board of Equalization and Tax Collector shall be, and hereby are, authorized to act as and shall perform respectively the duties of

Tax Assessor, Board of Equalization and Tax Collector of, and according to the ordinances and resolutions of the municipality or district so availing itself of their services, and according to law. As amended Acts 1959, 56th Leg., p. 222, ch. 131, § 1.

**Compensation**

Sec. 2. When the Tax Assessor, Board of Equalization, and Tax Collector of any municipality or district have been authorized by ordinance or resolution to act as and perform the duties, respectively, of Tax Assessor, Board of Equalization and Tax Collector of another municipality or district located entirely or partly within its boundaries, such included municipality or district shall pay the municipality or district, the services of whose officers and Board of Equalization are being utilized, for said services and for such other incidental expenses as are necessarily incurred in connection with the rendering of such services, such an amount as may be agreed upon by the governing bodies of said two municipalities or districts. As amended Acts 1959, 56th Leg., p. 222, ch. 131, § 2.

**Validation of ordinances, resolutions and acts**

Sec. 2a. All ordinances or resolutions heretofore adopted by any municipality or district entirely or partly located within the boundaries of another municipality or district authorizing said Tax Assessor, Board of Equalization, and Tax Collector of such other municipality or district to act for said municipality or district availing itself of the services of such officers are hereby in all things validated, and all acts of such officers in heretofore assessing and collecting taxes for said municipality or district are hereby in all things validated. As amended Acts 1959, 56th Leg., p. 222, ch. 131, § 3.

Effective 90 days after May 12, 1959, date of adjournment.

**CHAPTER TEN—PUBLIC UTILITIES**

**1. CITY OWNED UTILITIES**

Art.

1109f—1. Validation of contracts between districts and cities and towns for water supply [New].

Art.

1109j. Contracts with sanitation districts or non-profit corporations for water supply and distribution systems or sanitary sewer systems [New].

1109k. Contracts with soil conservation districts for flood control and drainage [New].

**1. CITY OWNED UTILITIES**

Art. 1109f—1. Validation of contracts between districts and cities and towns for water supply

Section 1. All contracts between districts or authorities heretofore created under the provisions of Article 16, Section 59, of the Constitution of Texas and cities, towns or villages heretofore created under the General Laws of the State of Texas, whereby the district or authority has agreed and contracted to furnish a water supply to such cities, towns or villages, are hereby validated.

Sec. 2. The provisions of this Act shall not apply to validate any agreement or contract which imposes any obligation upon the tax resource-

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

es of any such city, town or village, but shall apply only to those contracts whereby payments for a water supply are to be made from the revenues of the purchasers' water distribution system; nor shall this Act apply to any contract now involved in litigation questioning the validity of its provisions, if the question is ultimately determined against the validity thereof. Acts 1959, 56th Leg., p. 770, ch. 349.

Emergency. Effective May 30, 1959.

**Title of Act:**

An Act validating contracts between a district or authority created under the provisions of Article 16, Section 59, of the Constitution, and cities, towns or villages created under the General Laws, whereby

the district or authority agrees and contracts to furnish a water supply; providing certain exceptions to the operation of the Act; and declaring an emergency. Acts 1959, 56th Leg., p. 770, ch. 349.

**Art. 1109h. Eligible city authorized to issue revenue bonds; construction and equipment of water supply project**

**Extent of water supply projects; passage of bond issue ordinance; amount of bonds; operation of project**

Sec. 4. The water supply project of the Authority may consist of a dam, reservoir, related outlet facilities, or any or all of such elements, including but without limiting the meaning of the term, lands, easements, flowage rights and interest during construction. When the designs, plans and specifications for the water supply project of the Authority shall have been completed to the extent that they have been approved by the governing body of the Authority, which will actually construct the water supply project, and likewise by the governing body of such city, such eligible city may pass an appropriate ordinance or ordinances authorizing the issuance of its revenue bonds in an amount estimated to cover the entire cost to be incurred by the Authority in constructing the water supply project, or such portion thereof as the city shall have contracted to provide. Within the discretion of the governing body of such eligible city such revenue bonds may be issued in an amount sufficient to cover the cost of providing all other facilities needed to deliver to the city treated water from the water supply project, including but without limiting the effect of this provision, the intake structure, pumping stations and equipment, pipelines, treatment and filtration plants and all intermediate and terminal reservoirs, or any or all of such elements, including but without limiting the meaning of the term, lands, easements and rights-of-way needed for such purposes, and interest during construction. The construction and operation of the water supply project will remain the responsibility of the Authority, and, except for such part of said property, if any, as may be owned by such city under the contract between the Authority and such city, such property and facilities shall be owned by the Authority; and except for the water supply project and other facilities specified by contract, city will have the responsibility of constructing and operating, and shall own all of such facilities and property, including the intake, pumping stations, pipelines and equipment, treatment and filtration plants and all intermediate and terminal reservoirs. Within the discretion of such city the bonds may be authorized and sold at one time or in installments from time to time. As amended Acts 1959, 56th Leg., p. 77, ch. 36, § 1.

Emergency. Effective March 26, 1959.



**Bonds, requisites and provisions; additional bond issues; rates, tolls  
and charges; refunding bonds**

**Sec. 5.**

(d) It shall be the duty of such city to provide for such deposits into the interest and sinking fund, the reserve and other funds to the extent and as prescribed in the ordinance authorizing such bonds. Such ordinance shall require all or any of such deposits to be made from the revenues of its waterworks system or, if combined in such city, its waterworks and sanitary sewer system; but within the discretion of the governing body of such city all or any part of the deposits necessary to pay interest during construction and for not exceeding two additional years, may be provided from the proceeds of the sale of the bonds. The proceeds from the sale of such bonds shall be deposited by such city in a fund which will be utilized solely to pay the expense of issuing and selling said bonds and to pay the construction cost of such portion of the water supply project as the city shall be obligated to provide under the contract with the Authority and to pay the construction cost of that part of the facilities to be constructed, owned and operated by the city as provided in Section 4 of said Chapter 35, Acts of the Regular Session of the 55th Legislature as amended. As amended Acts 1959, 56th Leg., p. 77, ch. 36, § 2.

Emergency. Effective March 26, 1959.

**Art. 1109i. Water supply and sewage transportation and disposal contracts of certain cities with Trinity River Authority**

**Eligible city**

Sec. 1. Each city or town which either is situated wholly or partly within the boundaries of Trinity River Authority of Texas, created by Chapter 518, Acts of the Regular Session of the 54th Legislature,<sup>1</sup> and any amendments thereto, (hereinafter called the "Authority"), or is situated wholly or partly within the watershed of the Trinity River, is an "Eligible City" within the meaning of this Act. As amended Acts 1959, 56th Leg., p. 771, ch. 350, § 1.

<sup>1</sup> Article 8280—183.

**Outstanding bonds; revenues**

Sec. 3a. If any such city has revenue bonds outstanding at the time it executes such contract, secured by a pledge of the net revenues from the operation of a combined system comprising a waterworks system and a sanitary sewer system, and in addition thereto either a natural gas distribution system or an electric lighting and power system, that portion of the payments made by such city to the Authority which is used by the Authority for debt service on Authority's bonds may be treated by the city for its accounting purposes as a capital expenditure, provided that and so long as these conditions exist:

(1) The revenues from the city's gas system or electric lighting and power system, as the case may be, are adequate to satisfy the requirements of the bond ordinance or ordinances authorizing all revenue bonds outstanding at the time of making the contract and all such bonds thereafter authorized, for the provision of funds for operation, maintenance, and debt service; and

(2) The revenues from the city's sanitary sewer system and (if encumbered under the contract) the city's waterworks system, are ample to

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

meet the requirements of the contract with the Authority. Added Acts 1959, 56th Leg., p. 771, ch. 350, § 2.

Emergency. Effective May 30, 1959.

Section 3 of the amendatory Act of 1959 contained a severability clause.

**Art. 1109j. Contracts with sanitation districts or non-profit corporations for water supply and distribution systems or sanitary sewer systems**

**Authorization**

Section 1. Any city or town, whether operating under the General Law or under its special or home rule charter, is authorized to enter into a contract with a sanitation district organized under the authority of Article 16, Section 59 of the Constitution of Texas or any corporation or corporations organized to be operated without profit under the terms of which such district, corporation or corporations will acquire for the benefit of the city or town one or more water supply systems, water distribution systems and sanitary sewer systems, either singularly or together.

**Payments for water or sewage service; purchase of systems; pledge of revenues**

Sec. 2. When any such contract shall provide that the city or town shall become the owner of such system or systems at such time as all debt incurred by such district or corporation in the acquisition, construction, improvement or extension of such system or systems is paid in full, such city or town shall be authorized to make payments to such corporation for the supplying of water to the city or town and to such district or such corporation for the rendering of sanitary sewage service to part or all of the inhabitants of such city or town. Such contract may provide for purchase by the city or town of such system or systems by periodic payments to such district or corporation by the city or town in amounts which, together with the net income of the district or corporation, will be sufficient to pay the principal of and interest on the bonds of the district or corporation as they become due. Such contract may provide that any payments under this Section 2 shall be payable from and secured by a pledge of a specified portion of the revenues of the water system, the sewer system, or both, of the city or town or may provide for the levying of a tax to make such payments.

**Use of streets and public ways by district or corporation**

Sec. 3. Any such contract may provide that such district or corporation shall have the right to use the streets, alleys and public ways and places of the city or town for water, sewer or water and sewer purposes for a period of time which shall terminate at the time all such indebtedness of such district or corporation is paid in full and the city or town acquires title to such system or systems in accordance with this Act.

**Operation of systems by city**

Sec. 4. Any such contract may provide that the city shall operate the system or systems, and if such contract does so provide, the city or town shall be authorized to operate such system or systems.

## Approval of contract by governing body

Sec. 5. Any contract made by any city or town pursuant to this Act may be authorized by a majority vote of the governing body of such city or town. Acts 1959, 56th Leg., p. 511, ch. 224.

Effective 90 days after May 12, 1959, date of adjournment.

Section 6 of the Act of 1959 contained a severability provision.

Contract with district created to supply water to city, see art. 1109e.

Contracts with private corporations for water supply, see art. 1434.

## Art. 1109k. Contracts with soil conservation districts for flood control and drainage

Section 1. All counties, cities, water control and improvement districts, drainage districts and other political subdivisions in the State of Texas are authorized to enter into contracts with soil conservation districts for the joint acquisition of right-of-ways or joint construction or maintenance of dams, flood detention structures, canals, drains, levees and other improvements for flood control and drainage as related to flood control, and for making the necessary outlets and maintaining them; and providing further that such contracts and agreements shall contain such terms, provisions and details as the governing bodies of the respective political subdivisions determine to be necessary under all facts and circumstances.

Sec. 2. All counties, cities, water control and improvement districts, drainage districts and other political subdivisions in the State of Texas may contribute funds to soil conservation districts for construction or maintenance of canals, dams, flood detention structures, drains, levees and other improvements for flood control and drainage as related to flood control and for making the necessary outlets and maintaining them regardless of whether the title to such properties is vested in the State of Texas, or a soil conservation district, so long as the work to be accomplished is for the mutual benefit of the donor and the agency or political subdivision having title to such property on which the improvements are located.

Sec. 3. All counties in the State of Texas are authorized to expend Permanent Improvement Funds for carrying out the purposes of this Act and in addition thereto such counties may also expend Flood Control Funds levied pursuant to Section 1a of Article VIII of the Constitution of Texas and Article 7048a of Vernon's Civil Statutes for the purposes of this Act; providing that cities, water control and improvement districts, drainage districts and other political subdivisions may expend the appropriate funds of the various cities and political subdivisions for carrying out the purposes of this Act. Acts 1959, 56th Leg., p. 686, ch. 313.

Emergency. Effective May 30, 1959.

Section 4 of the amendatory Act of 1959 repealed all conflicting laws and parts of laws to the extent of such conflict, section 5 contained a severability clause.

Contracts with private corporations for water supply, see art. 1434.

Contracts with United States for district water supply, see art. 7880-53.

Cooperation among water improvement or conservation and reclamation districts with districts of other states, see art. 7794b.

Powers of counties respecting flood control, see art. 1581e.

**CHAPTER THIRTEEN—HOME RULE**

Art.  
1174a—4. Validation of adoption of charter; elections and assumption of office; acts of officers [New].

1182c—3. Repealed.

1182c—5. Cities which have annexed territory within water control and improvement or supply districts [New].

Art.

1182c—6. Validation of contracts affecting water and sewer facilities of cities and contiguous water control and improvement districts [New].

1182d—1. Donation of unimproved land to counties for use by juvenile boards; validation; authorization [New].

**Art. 1174a—4. Validation of adoption of charter; elections and assumption of office; acts of officers**

Section 1. In each instance where an election has heretofore been held in an incorporated city for the purpose of voting upon the adoption of a home rule charter for such city, where copies of the proposed charter with the date of the election shown thereon were mailed to all voters within said city as shown by the tax roll thereof, and a news item showing the dates and purpose of said election was published in a newspaper published within such city at least thirty (30) days prior to the date of such election, and the proposed charter in its entirety was printed and published in a newspaper published within such city at least twenty (20) days prior to the date of such election, and a majority of the qualified voters of said city voting at said election voted in favor of the adoption of such charter, all such proceedings relating to the adoption of said charter are hereby in all things validated, ratified, and confirmed, and said charter shall constitute the home rule charter of said city under the Constitution and Laws of this State. All elections held under the provisions of said charter for the purpose of electing members of the governing body of the city and the assumption of office by such elected members are hereby in all things validated. All acts of the city officers and officials of any such city are hereby in all things validated.

Sec. 2. This Act shall not be construed as validating the adoption of any charter or the charter so adopted if the validity of the charter adoption proceedings or of the charter are involved in litigation on the effective date of this Act in a court of competent jurisdiction of this State, and such litigation is ultimately determined against the validity thereof. Acts 1959, 56th Leg., p. 984, ch. 459.

Emergency. Effective May 30, 1959.

Section 3 of the Act of 1959 contained a severability clause.

**Art. 1182c—1. Cities which have annexed territory within water control and improvement or supply districts**

**Outstanding obligations**

Sec. 4. When all of the territory within such district has been annexed as hereinabove provided and in cases where such district has outstanding bonds, warrants or other obligations, payable solely from the net revenues from the operation of any utility system or property, such city shall nevertheless take over and operate such system or properties, and shall apply the net revenues from the operation thereof to the payment of such outstanding district revenue bonds, warrants or other bond-

ed obligations in all respects as though the district had not been abolished.

If such city does not itself have outstanding revenue bonds, warrants or other obligations payable from, and secured by a pledge of, the net revenues of its own utility system or properties of like kind, or, if such city does have outstanding revenue bonds, warrants or other obligations payable from, and secured by pledge of, the net revenues of its own utility system or properties of like kind, but the revenues therefrom are sufficient to meet its own outstanding obligations to which such revenues are pledged, and have over a period of five (5) years prior to the effective date of this Amendment hereto had an annual surplus in said fund sufficient to meet the annual obligations for which the revenues from the water district, or districts, are pledged, such city may, at its option, combine such utility system or properties acquired from such district or districts with its own similar utility system or properties and, in such case, such city shall levy each year against all property subject to taxation by such city, an ad valorem tax in sufficient amount, when taken together with other funds and revenues of the city which may be lawfully appropriated and devoted thereto, to provide sufficient funds and moneys to make the payment of the principal of and interest on any such assumed bonds, warrants or other obligations so secured.

If any such city does have outstanding bonds, warrants or other bonded obligations payable from, and secured by a pledge of, the net revenues of the city's said utility system or properties of like kind, and such city does not have annually accruing to its surplus revenue fund an amount over and above the amount of such fund pledged to the payment of outstanding obligations of the city sufficient to meet the annual obligations for which the revenues from the water district or districts are pledged, then, until the refunding hereinafter authorized has been accomplished, the city shall continue to operate former properties of the district separate and apart from any similar properties of the city and shall not commingle in any way the revenue of any such several systems. Such city shall faithfully perform all duties, functions and obligations imposed by law or by contract upon the governing body of such district in regard to the outstanding bonds, warrants, or other obligations payable solely from the revenues of such former district's utility system or properties and shall likewise, separate and apart, perform all duties, functions and obligations imposed upon such city in connection with its own revenue bonds, warrants or other obligations; provided that overhead expenses may be allocated between any two (2) or more such systems of properties in direct proportion of the gross income of each. As amended Acts 1959, 56th Leg., p. 940, ch. 436, § 1.

Emergency. Effective May 30, 1959.

Section 2 of the amendatory Act of 1959 provided that neither the passage of this Act nor any action taken by any city, pursuant to the authorization hereby given, shall impair any right which the holder of any bond or bonds might otherwise be entitled to avail himself of, in the event of any failure on the part of such city to pay any such bond or any interest thereupon

when due in accordance with the terms and provisions of such bond.

Section 3 repealed all conflicting laws and parts of laws to the extent of such conflict. Section 4 contained a severability clause.

Validation of contracts affecting water and sewer facilities of cities and contiguous water control and improvement districts, see art. 1182c—6.

**Art. 1182c—3. Repealed. Acts 1959, 56th Leg., p. 515, ch. 228, § 7.**  
**Eff. May 25, 1959**

Article 1182c—3 was derived from Acts 1957, 55th Leg., p. 863, ch. 380 and related

to succession, by cities which have annexed territory within water control and im-

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provement or supply districts to powers, duties, assets and obligations of such districts. See now, art. 1182c—5.

Validation: Section 8 of Acts 1959, 56th Leg., p. 515, ch. 228 provided:

"Sec. 8. All proceedings heretofore had by cities and districts under said Chapter 380 [Acts 1957, 55th Leg., p. 863] or otherwise, relating to the abolition of any such district and the distribution of the assets of such district and the assumption by such cities of debts, liabilities, and obligations of the district, and all agreements heretofore entered into between cities and any such district with respect to such abolition, distribution, and assumption, and all annexations by cities heretofore made of territory or territories of any such district and all incorporations of cities over territory or territories of any such district, and the actions of cities in taking over properties and assets of any such dis-

trict and in assuming the debts and liabilities and obligations of any such district, are hereby in all things validated, ratified, and confirmed; and all bonds heretofore issued by such cities to refund obligations of any such district, and all proceedings heretofore had by cities relating to the issuance of such refunding bonds whether such bonds have or have not yet been issued, and all bonds heretofore voted or otherwise authorized by cities to extend and improve, either or both, district utility systems or properties acquired or to be acquired by such cities and all proceedings relating to such bonds, are hereby in all things validated, ratified, and confirmed. It is expressly provided, however, that this Section shall have no application to litigation pending on the effective date of this Act questioning the validity of any of the matters hereby validated if such litigation is ultimately determined against the validity of the same."

### **Art. 1182c—5. Cities which have annexed territory within water control and improvement or supply districts**

#### **Application of act; succession to powers, duties, assets and obligations of districts**

Section 1. This Act shall apply to all incorporated cities and towns, including Home Rule Cities and those operating under General Laws or special charters (hereinafter called "city" or "cities"), which now or hereafter contain within their city or corporate limits (by virtue of annexation of territory or original incorporation, either or both) any part of the territory within one (1) or more water control and improvement districts or fresh-water supply districts (hereinafter called "district" or "districts"), which districts were organized for the primary purpose of providing such municipal functions as the supply of fresh water for domestic or commercial uses, or the furnishing of sanitary sewer service, any or all, when the balance of the territory comprising such district or districts lies in another city or cities so that the entire district lies wholly within two (2) or more cities. Such cities shall succeed to the powers, duties, assets and obligations of such district or districts in the manner and to the extent hereinafter provided. Nothing herein shall prohibit any city from continuing to operate utility facilities within any such district in which such facilities are, or were, owned and operated by such city at the time that the part of the territory of the district became, or becomes, a part of or included within the boundaries of such city.

#### **Abolition of districts; distribution of assets; assumption of obligations**

Sec. 2. Such district may be abolished by mutual agreement between the district and the cities wherein such district lies. Subject to the provisions of Section 4 of this Act, such agreement shall provide for the distribution among such cities of all the properties and assets of the district and for the pro rata assumption by such cities of all the debts, liabilities and obligations of the district, said distribution and assumption to be predicated or based upon the pro rata value of the properties and assets of the district going to such cities, respectively, to the entire value of such properties and assets. The determination of the value of such properties and assets may be on an original cost

basis, a reproduction cost basis, or the fair market value basis. Such agreement shall designate the date upon which the district shall be abolished, and the agreement shall be approved by ordinance adopted by the governing body of each of the cities and by order or resolution adopted by the governing board of the district, and the same shall be so approved prior to the date designated in the agreement for such abolition, distribution, and assumption.

#### Levy of taxes to pay obligations

Sec. 3. When its pro rata part of any district bonds, warrants, or other obligations payable in whole or in part from ad valorem taxes have been assumed by any such city, the governing body of such city shall thereafter levy and cause to be collected upon all taxable property within such city, taxes to pay its pro rata part of the principal of and interest on such bonds, warrants, or obligations, as they respectively become due and payable.

#### Operation of systems with outstanding obligations payable from revenue

Sec. 4. When any such district is abolished and has outstanding bonds, warrants, or other obligations payable in whole or in part from net revenues from the operation of the district utility system or properties, the affected cities shall nevertheless take over and operate such system or properties through a board of trustees, hereinafter provided for, and shall apply the net revenues from the operation thereof to the payment of such outstanding district revenue bonds, warrants, or other obligations in all respects as though the district had not been abolished, and such system or properties shall be so operated until all such bonds, warrants, or other obligations shall have been retired in full, either by the payment thereof or by the refunding thereof into obligations of the cities. Such board of trustees shall consist of not more than five (5) members, shall be appointed by the governing bodies of the cities, shall serve for such term or terms, and shall perform such duties as shall be set forth in the agreement mentioned in Section 2 of this Act. It is specifically provided, however, that such board of trustees shall faithfully perform all duties, functions, and obligations imposed by law or by contract upon the abolished district and its governing board in regard to said outstanding district bonds, warrants, or other obligations payable in whole or in part from net revenues of the district utility system or properties, including the charging and collection of sufficient rates for the services of such system or properties and the application of revenues so as to comply with all covenants and agreements contained in the proceedings pertaining to such bonds, warrants, or other obligations with respect to the payment of the interest thereon and principal thereof and the maintenance of reserves and other funds. When all such district revenue bonds, warrants, or other obligations have been retired in full, either by the payment thereof or by the refunding thereof, then the properties and assets of the district shall be distributed among the cities as provided in Section 2 hereof, and such board of trustees shall thereupon be abolished.

#### General obligation refunding bonds; warrants; issuance; notice; interest

Sec. 5. Any such city shall be authorized to issue general obligation refunding bonds in its own name to refund in whole or in part its pro rata part of any outstanding district bonds, warrants, or other obligations payable in whole or in part from ad valorem taxes (including

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

unpaid earned interest thereon) so assumed by it. Such refunding bonds shall be issued in the manner provided in the Bond and Warrant Law of 1931, as heretofore or hereafter amended; provided, however, that it shall not be necessary to give any notice of intention to issue such refunding bonds and no right of referendum thereon shall be available. Such refunding bonds shall bear interest at the same or lower rate than that borne by the obligations refunded unless it is shown mathematically that a saving will result in the total amount of interest to be paid.

**Revenue refunding bonds for payment of district bonds, warrants  
or obligations; combination of issues**

Sec. 6. Any such city shall be authorized to issue revenue refunding bonds or general obligation refunding bonds, either or both, in its own name to refund in whole or in part its pro rata part of any outstanding district bonds, warrants, or other obligations payable solely from net revenues (including unpaid earned interest thereon) so assumed by it, and shall also have the authority to combine any number of different issues or bonds of different issues of both district and city revenue bonds, warrants, or other obligations into one (1) or more series of revenue refunding bonds (and pledge the net revenues of such utility systems or properties to the payment thereof) or into one (1) or more series of general obligation refunding bonds, either or both, as the governing body may deem proper; provided however, that no originally issued city revenue bonds shall be refunded into city general obligation refunding bonds. The provisions of Articles 1111 through 1118, Vernon's Texas Civil Statutes, 1925, as amended, shall apply to such revenue refunding bonds except as otherwise provided herein, and no election for the issuance of such revenue refunding bonds shall be necessary; and in the issuance of revenue refunding bonds, it is expressly provided that such cities shall have the benefits provided by Article 1118n—5, Vernon's Texas Civil Statutes, 1925, as amended, including the power and authority to issue and sell revenue refunding bonds under Section 1a of said Article, as amended in 1955, and the provisions of such Article, as amended, relating to outstanding revenue bonds shall apply to outstanding revenue bonds assumed by cities under this Act. General obligation refunding bonds shall be issued in the manner provided in the Bond and Warrant Law of 1931, as heretofore or hereafter amended; provided, however, that it shall not be necessary to give any notice of intention to issue such refunding bonds and no right of referendum thereon shall be available. Such revenue refunding bonds or general obligation refunding bonds shall bear interest at the same or lower rate than that borne by the obligations refunded unless it is shown mathematically that a saving will result in the total amount of interest to be paid. Acts 1959, 56th Leg., p. 515, ch. 228.

*Emergency. Effective May 25, 1959.*

Eminent domain by cities for water systems, see art. 1109b.

Validating annexation by cities of fresh water supply districts, see art. 1182c.

Validation, ratification and confirmation of proceedings had by cities under Acts 1957, 55th Leg., p. 863, ch. 380, see note under art. 1182c—3 (repealed).

**Art. 1182c—6. Validation of contracts affecting water and sewer facilities of cities and contiguous water control and improvement districts**

Section 1. In each instance where since Chapter 161, Laws of the Regular Session of the 55th Legislature of Texas, 1957, amending Article 1182c—1, Vernon's Revised Civil Statutes of Texas, became effective, any



city, including home rule cities, has entered into a contract with a contiguous Water Control and Improvement District, part or all of which district by reason of annexations to such city was at the time of the making of such contract within the territorial limits of such city, which contract provides for the operation of the water and sewer facilities of such district by such city and makes other provisions with respect to the operation of the water and sewer facilities of such district and such city and with respect to the rights of such district and such city thereto, such contract is hereby validated, ratified and confirmed and declared to be enforceable and legally effective in accordance with its terms, and the parties thereto are authorized to perform and carry out the provisions and obligations of such contract. No such contract shall be so construed as to have the effect of giving the outstanding bonds of any such district a lien on any revenues not contemplated by the proceedings authorizing such bonds, nor to have the effect of giving any outstanding bonds of such city a lien on any of the revenues pledged to the payment of such outstanding district bonds until all such outstanding district bonds shall have been retired.

Sec. 2. This Act shall not apply to any contract, the validity of which is under attack, in litigation pending in any court in Texas at the time this Act becomes effective. Acts 1959, 56th Leg., p. 635, ch. 289.

Emergency. Effective May 30, 1959.

Section 3 repeals all conflicting laws and parts of laws to the extent of such conflict only.

Cities which have annexed territory within water control and improvement or supply districts, see art. 1182c—1.

Validation of contracts between eligible cities and districts for water supply, see art. 1109f.

**Title of Act:**

An Act validating, ratifying and confirming certain contracts heretofore entered into between cities and contiguous Water Control and Improvement Districts affecting the water and sewer facilities of said cities and districts and the operation thereof; and declaring an emergency. Acts 1959, 56th Leg., p. 635, ch. 289.

**Art. 1182d—1. Donation of unimproved land to counties for use by juvenile boards; validation; authorization**

Section 1. All donations of unimproved land by Home Rule cities of this State by grant or lease to the counties wherein they are located for use by the Juvenile Boards of said counties are hereby validated.

Sec. 2. Home Rule cities of this State are authorized and empowered to donate by grant or lease to the counties wherein they are located any unimproved land for use by the Juvenile Boards of such counties. Acts 1959, 56th Leg., p. 275, ch. 155.

Effective 90 days after May 12, 1959, date of adjournment.

Acceptance of donations for schools for delinquent juveniles, see art. 5138a.

Donations by cities and counties to Texas or United States, see art. 835c.

Relinquishing to donors lands donated to county, see art. 1581c.

**Title of Act:**

An Act validating donations of unimproved land by Home Rule cities by grant or lease to counties wherein they are located for use by Juvenile Boards of such counties, and authorizing such donations; and declaring an emergency. Acts 1959, 56th Leg., p. 275, ch. 155.

**CHAPTER FOURTEEN—CITIES ON NAVIGABLE STREAMS****Art. 1187e. Harbors, ports or navigational facilities**

**Cities on gulf coast; authority to issue negotiable revenue bonds, refunding bonds or to accept loans or grants**

Section 1. (a) Any city located on the coast of the Gulf of Mexico, or on any channel, canal, bay or inlet connected with the Gulf of Mexico, shall have the right, power and authority to issue negotiable revenue bonds or accept loans or grants from the Federal, State or County Governments or any of their agencies, or from any other source or sources, to build, acquire, purchase, construct, enlarge, extend, repair, maintain, improve, replace, develop, regulate, operate, lease, mortgage and encumber their harbors, ports, or navigational facilities in connection therewith or any aids thereto, including but not limited to boathouses, boat pilings, seawalls, breakwaters, shore protections, wharfs, docks, walks, piers, pavilions, ways, walls, lands, bulkheads, fills, canals, channels, slips, pools, waterways, turning basins, dry docks, service facilities, bridges, tubes, underpasses, tunnels, ferries, buildings, warehouses, structures, bunkering facilities, equipment, loading devices, floating plants, lighterage, aids to navigation, improvements, towing facilities, and all other facilities or improvements or aids incident to or necessary or desirable in connection therewith, and as additional security therefor, by the terms of such mortgage or encumbrance, may grant to the purchaser under sale or foreclosure thereunder a franchise to operate such structures and facilities, and the improvements thereof, for a term of not over thirty (30) years after such purchase, subject to all laws regulating the same then in force.

(b) Such city shall have the right, power and authority to issue negotiable revenue bonds for the purposes mentioned herein payable from such revenues as are pledged by the governing body of such city to the payment of such bonds, and the applicable provisions of Chapter 1, Title 22, Revised Civil Statutes of 1925, as amended, shall be applicable to the issuance of such bonds, except as otherwise provided in this Act.

(c) Such city shall have the right, power and authority to issue refunding bonds for the purpose of refunding any outstanding bonds authorized by this Act and interest thereon. Such refunding bonds may be issued to refund more than one series of outstanding bonds and combine pledges for the outstanding bonds for the security of the refunding bonds, and may be secured by other or additional revenues. The provisions of this law with reference to the approval by the Attorney General of Texas and the remedies of the holders shall be applicable to refunding bonds. Refunding bonds shall be registered by the Comptroller of Public Accounts upon surrender and cancellation of the bonds to be refunded, but in lieu thereof, the resolution authorizing their issuance may provide that they shall be sold and the proceeds thereof deposited in the bank where the original bonds are payable, in which case the refunding bonds may be issued in an amount sufficient to pay the interest on the original bonds to their option date or maturity date, and the Comptroller of Public Accounts shall register them without concurrent surrender and cancellation of the original bonds. No election shall be necessary for the refunding of any bonds provided for in this Act. Refunding bonds may be issued for the purpose of refunding the bonds of a single series or issue or two or more consecutive issues or series of bonds, and such re-

funding bonds shall enjoy the same priority of lien on the revenues pledged to their payment as pledged to the bonds refunded, provided that when two or more consecutive series or issues of bonds are refunded in a single issue of refunding bonds, the lien on all such refunding bonds shall be equal if all of the outstanding bonds of the several series or issues of bonds to be refunded are surrendered in exchange for such new refunding bonds. No refunding bonds shall attain any degree of priority of lien greater than that enjoyed by the series or issue then to be refunded having the highest priority of lien. Such refunding bonds shall bear interest at the same or lower rate than borne by the bonds refunded, unless it is shown mathematically that a saving will result in the total amount of interest to be paid and that the annual principal and interest burden will not be increased so as to infringe upon or impair the rights of the holders of any bonds enjoying a prior or inferior lien.

**Series bonds; pledge of revenues; rates for charges; payment of interest and expenses; default in payment of principal or interest**

Sec. 2. (a) Bonds and refunding bonds provided for in this Act may be issued in more than one series and from time to time.

(b) To secure payment of principal and interest of the revenue bonds authorized by this Act, such city may pledge the gross or net revenues of: (1) any or all of the installations, improvements, projects, or properties which are built, purchased, constructed, enlarged, extended, repaired, improved, replaced, developed, or financed by the proceeds of bonds authorized by this Act, and (2) any or all of the existing facilities, installations, improvements, projects, or properties of such city existing prior to the issuance of such bonds under the provisions of this Act which may be pledged, and (3) any or all contracts theretofore or thereafter made by such city which may be pledged, and (4) any or all other revenues specified by the ordinance or resolution authorizing the issuance of the bonds authorized by this Act which may be pledged. The ordinance or resolution authorizing the bonds and pledging revenues may reserve the right, under conditions therein specified, to issue additional bonds which will be on a parity with or subordinate to the bonds then being issued. The term "gross revenues," as used in this Section of the Act, shall mean the entire revenues of the installations, improvements, projects, or properties pledged. The term "net revenues," as used in this Section of the Act, shall mean the gross revenues of the installations, improvements, projects, properties, or facilities pledged by the ordinance or resolution authorizing the issuance of the bonds after deducting the amount necessary to pay the cost of maintaining and operating such installations, improvements, projects, properties, or facilities. Any revenues from contracts which are pledged shall be the entire amount due such city under such contract unless specified in the ordinance or resolution authorizing the bonds. Such city shall have the right, power and authority to transfer to the general fund of such city and use for general or special purposes, revenues pledged of the said installations, improvements, projects, properties, or facilities, by the ordinance or resolution authorizing the issuance of the bonds but only in the amount and to the extent as may be authorized and permitted in the ordinance or resolution authorizing the issuance of the bonds.

(c) When bonds payable from revenues are issued under this Act, it shall be the duty of the governing body of such city to fix, and from time to time to revise, the rates of compensation for charges, rates, rentals, tolls, leases, and services rendered by such city in connection with

such installations, improvements, projects, properties, or facilities, of which the revenues are pledged which will be sufficient to pay the expense of operating and maintaining such installations, improvements, projects, properties, or facilities, and to pay the bonds as they mature and the interest as it accrues and to maintain the reserve and other funds as provided in the ordinance or resolution authorizing the bonds unless otherwise specifically provided for in the ordinance or resolution authorizing the bonds. When bonds payable from revenues are issued under this Act, the face of the bonds shall contain this clause: "The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation." Such bonds authorized under this Act shall never be a debt of such city but solely a charge upon the property and facilities and contracts as authorized by the ordinance or resolution authorizing the issuance of the bonds.

(d) From the proceeds from the sale of the bonds payable from revenues, such city may set aside an amount for the payment of interest expected to accrue during construction and a reserve interest and sinking fund, and such provision may be made in the ordinance or resolution authorizing the bonds.

(e) Proceeds from the sale of any bonds provided for in this Act may also be used for the payment of all expenses necessarily incurred in accomplishing the purposes for which the bonds are issued and in the issuance of the bonds, including but not limited to engineering fees, architectural fees, legal fees, fiscal agent fees, and the cost of printing, issuing and delivering the bonds.

(f) In the event of a default or a threatened default in the payment of principal or of interest on bonds payable from revenues, any court of competent jurisdiction may, upon petition of the holders of twenty-five percent (25%) of the outstanding bonds of the issue thus in default or threatened with default, appoint a receiver with authority to collect and receive all income of the installations, improvements, projects, properties, facilities, or contracts of which the revenues were pledged, employ and discharge agents and employees, take charge of funds on hand, and manage the proprietary affairs of such installations, improvements, projects, properties, facilities, or contracts of which the revenues were pledged without consent or hindrance by the governing body of the city. Such receiver may also be authorized to rent or lease the installations, improvements, projects, properties, or facilities of which the revenues were pledged, renew such contracts with the approval of the court appointing him. The court may vest the receiver with such other powers and duties as the court may find necessary for the protection of the holders of the bonds.

#### Election authorizing bond issue; notice

Sec. 3. No bonds authorized by this Act, except refunding bonds, shall be issued unless authorized by an election at which only the qualified voters who reside in such city and who own taxable property therein and who have duly rendered the same for taxation and unless a majority of the votes cast is in favor of the issuance of the bonds. Such election shall be held and notice thereof given as is provided in the case of the issuance of municipal bonds by such city.

#### Examination of bonds and record by Attorney General; approval; registration; incontestability

Sec. 4. After any bonds, including refunding bonds, are authorized under the provisions of this Act, such bonds and the record relating to

their issuance shall be submitted to the Attorney General of Texas for his examination as to validity thereof. If such bonds have been authorized in accordance with the Constitution and laws of the State of Texas, and subject to the limitation of Section 6(b) of this Act, he shall approve the bonds or refunding bonds and the bonds or refunding bonds then shall be registered by the Comptroller of Public Accounts. Thereafter, the bonds or refunding bonds shall be legal, valid and binding and shall be incontestable for any cause.

#### **Legal and authorized investments**

Sec. 5. All such bonds and refunding bonds of such city shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, fiduciaries, trustees, guardians, and for the sinking funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas. Such bonds shall be eligible to secure the deposit of any and all public funds of the State of Texas, and any and all public funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas; and such bonds shall be lawful and sufficient security for said deposits to the extent of their value, when accompanied by all unmatured coupons appurtenant thereto.

#### **Authority of cities to issue bonds payable from taxes; applicability of act; location of installations**

Sec. 6. (a) No such city nor any other city in the State of Texas shall have any right, power or authority to issue any bonds payable from taxes under the provisions of this Act.

(b) The provisions of this Act shall not apply to any city of the State of Texas having a population of twelve thousand (12,000) or more according to the last preceding United States census, and the Attorney General of Texas shall have no authority or duty to approve any bonds under the provisions of this Act for cities having a population of twelve thousand (12,000) or more according to the last preceding United States census.

(c) The installations, improvements, projects, properties, or facilities which are authorized by this Act to be built, acquired, purchased, constructed, enlarged, extended, repaired, maintained, improved, replaced, developed, or financed under the provisions of this Act shall be within the corporate limits of such city.

#### **Exemption from taxation of installations and bonds**

Sec. 7. The accomplishment of the purposes stated in this Act being for the benefit of the people of such city and of this state and for the improvement of their properties and industries, such city in carrying out the purposes of this Act will be performing an essential public function under the Constitution and shall not be required to pay any tax or assessment on such installations, improvements, projects, properties, or facilities, or any part thereof, and the bonds or refunding bonds issued hereunder and their transfer and the income therefrom, including the profits made on the sale thereof, shall at all times be free from taxation within this state.

#### **Cumulative effect of act**

Sec. 8. This law is cumulative of all existing laws of the State of Texas that are applicable but to the extent that the provisions of any

such laws may be in conflict or inconsistent with the provisions of this Act, the provisions of this Act shall prevail.

#### Severability

Sec. 9. If any 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, and the application of such provision to other persons or circumstances, shall not be affected thereby. As amended Acts 1959, 56th Leg., p. 134, ch. 80, § 1.

Emergency. Effective April 17, 1959.

### CHAPTER TWENTY—MISCELLANEOUS PROVISIONS

Art.  
1268a. Natural gas system; authority to lease and grant option to purchase [New].

Art.  
1269h—2. Pledge of ad valorem tax to payment of airport operation and maintenance expense [New].

#### Art. 1266. Discontinuing territory

Whenever there exists within the corporate limits of any city in this State of one hundred and fifty thousand (150,000) or more population according to the preceding Federal census located in a county having a population according to such census in excess of two hundred and five thousand (205,000), territory to the extent of at least three (3) acres contiguous, unimproved and adjoining the lines of any such city, or whenever there exists within the corporate limits of any city in this State of five hundred and ninety-six thousand (596,000) or more population according to the last preceding Federal census, improved territory which is non-taxable to the city and which is contiguous and adjoining the lines of any such city, the governing body of any such city, whether organized by special law, home rule charter, or general laws of this State, may by ordinance duly passed discontinue said territory as a part of any such city. When said ordinance has been duly passed, the governing body shall cause to be entered an order to that effect on the minutes or records of such city; and from and after the entry of such order, said territory shall cease to be a part of such city. As amended Acts 1959, 56th Leg., p. 563, ch. 254, § 1.

Emergency. Effective May 26, 1959.

#### Art. 1268a. Natural gas systems; authority to lease and grant option to purchase

Any city which owns its natural gas distribution system and has heretofore had an election resulting favorably to a sale of such system may, by majority vote of its governing body, enter into a contract leasing said system to any person, firm or corporation. Any such city may also grant an option to the lessee or to any other person, firm or corporation to purchase the system at a price specified or to be determined in the manner provided in such lease or option contract. It is provided, however, that if the city has any bonds outstanding payable from the revenues of its gas system, it shall not make such lease or option contract except under conditions specified in the ordinance authorizing the bonds, unless provision is made for the full payment of the bonds with interest to their maturities or to the date they are to be redeemed prior to maturity. Acts 1959, 56th Leg., 2nd C.S., p. 92, ch. 8, § 1.

Emergency. Effective July 13, 1959.

Election to mortgage, encumber or sell natural gas system, see art. 1112.

**Title of Act:**

An Act empowering any city which heretofore has held an election authorizing the sale of its natural gas system to lease

such system and to grant to the lessee or to others an option to purchase such system; prescribing certain conditions under which such contract may be made; enacting other provisions related to the subject; and declaring an emergency. Acts 1959, 56th Leg., p. 92, ch. 8.

**Art. 1269h—2. Pledge of ad valorem tax to payment of airport operation and maintenance expense**

**Section 1.** This Act shall be applicable to any city operating under its Home Rule Charter, either adopted pursuant to the Home Rule amendment to the Constitution of Texas, or granted by the Legislature and amended pursuant to said provision of the Constitution, having a population of 200,000 or more according to the last preceding Federal Census, which owns land acquired for airport purposes, and which, either in whole or in part, is leased to an airport operating company or corporation.

**Sec. 2.** In the event any such city shall determine to issue revenue bonds as authorized by Chapter 43, Acts of the 53rd Legislature of Texas, First Called Session, 1954, as amended,<sup>1</sup> to acquire the improvements constructed by any such airport operating company or corporation on any such land and to further improve its airport or airports, such city, in addition to the pledge of the revenues and income of said airport or airports to the payment of the operation and maintenance expenses and principal of and interest on such bonds, shall be authorized to levy and pledge to the payment of such operation and maintenance expenses, as a supplement to the pledge of revenues for such purpose, all or any part of the ad valorem tax authorized by Chapter 114, Acts 1947, 50th Legislature, Regular Session.<sup>2</sup> The proceeds of any tax thus pledged shall be utilized annually to the extent required by the ordinance authorizing such revenue bonds to assure the efficient operation and maintenance of such airport or airports and such city, in its discretion, may covenant in the proceedings authorizing the issuance of said bonds that certain costs of operating and maintaining such airport or airports, as may be enumerated in said proceedings, will be paid by the city from the proceeds of such tax. If it is deemed advisable by the city that revenue bonds theretofore issued under said Chapter 43, supra, and then outstanding, should be refunded so as to facilitate the financing of the acquisition of said improvements and the further improvement of its airport or airports, it shall be authorized to make a like pledge of said tax in the proceedings authorizing such refunding bonds and any additional revenue bonds issued for the purposes prescribed in said Chapter 43, supra. Acts 1959, 56th Leg., 2nd C.S., p. 102, ch. 13.

<sup>1</sup> Article 1269j—5.

<sup>2</sup> Article 46d—1 et seq.

Emergency. Effective July 16, 1959.

Airport revenue bonds, see art. 1269j—5.

# BUSINESS CORPORATION ACT

## PART TWO

### Art. 2.01. Purposes

Corporations doing fiduciary and depository business, amendment of charter to adopt business corporation act, see Vernon's Ann.Civ.St., art. 1314a.

Trust companies, see Vernon's Ann.Civ. St. arts. 1513a, 342—301.

## PART NINE

### 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, 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. As amended Acts 1959, 56th Leg., p. 224, ch. 132, § 1.

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. As amended Acts 1959, 56th Leg., p. 224, ch. 132, § 2.

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. Added Acts 1959, 56th Leg., p. 224, ch. 132, § 3.

Effective 90 days after May 12, 1959, date of adjournment.

Section 4 of the amendatory Act of 1959 contained a severability clause.

# TEXAS NON-PROFIT CORPORATION ACT

Acts 1959 (56th Leg.) Ch. 162

*An Act to adopt and establish general statutory provisions applicable to non-profit corporations; to provide for the incorporation, regulation, admission to conduct affairs in Texas, merger, consolidation, receivership, dissolution, and liquidation of those non-profit corporations to which this Act shall apply; to provide that it shall apply to certain existing Texas corporations and to certain Texas corporations incorporated after the Act becomes effective and certain foreign corporations authorized to conduct affairs in Texas after it becomes effective; to provide for powers, duties, authorizations and responsibilities of affected corporations and their officers, directors, and members; providing the Antitrust Laws of Texas shall not be affected or nullified under the provisions of this Act; containing a saving clause; repealing Acts in conflict herewith; and declaring an emergency.*

Art.

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

Applicability of law governing boxing to amateur non-profit contests, see Vernon's Ann.P.C. art. 614—17b.

Borrowing money from federal agencies, non-profit corporations, see Vernon's Ann. Civ.St. art. 1644c.

Corporations operating non-profit institutions, prohibition on organization under Business Corporation Act, see V.A.T.S. Bus.Corp. Act, art. 2.01.

Creation of private corporations by general laws, see Const. art. 12, § 1.

Electric cooperative corporations, non-profit operation, see Vernon's Ann.Civ.St. art. 1528b § 25.

Eleemosynary institutions, see Vernon's Ann.Civ.St. art. 3174 et seq.

Group hospital non-profit corporations, see V.A.T.S. Insurance Code, art. 20.01 et seq.

Inapplicability of Business Corporation Act to corporations operating non-profit institutions, see V.A.T.S. Bus.Corp. Act, art. 9.14.

Livestock corporations, creation for mutual protection of members, see Vernon's Ann.Civ.St. art. 1302(102).

Non-profit amateur athletic associations, see Vernon's Ann.P.C. art. 614—1.

Poultry associations, creation for mutual protection of members, see Vernon's Ann. Civ.St. art. 1302d—1.

Telephone cooperatives, non-profit operation, see Vernon's Ann.Civ.St. art. 1528c, § 22.

## 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 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 corporation 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.

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

(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.

Corporation, definition, see also, Vernon's Ann.Civ.St. arts. 911d, 4671; V.A.T.S. Bus. Corp. Act, art. 1.02.

### Art. 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.

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.

Educational corporations, see Vernon's  
Ann.Civ.St. arts. 1410 et seq.

Fraternal benefit societies, see V.A.T.S.  
Insurance Code, art. 10.01.

## 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.

(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.

(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 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.

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

(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 officers 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.

Religious, charitable and educational institutions, see Vernon's Ann.Civ.St. art. 1396 et seq.

### Art. 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 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 performing unauthorized acts, or to enforce divestment of real property acquired or held contrary to the laws of this State.

#### Art. 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, 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.

#### Art. 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.

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

(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 2.14 C of this Act, by the members.

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

- (1) Endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof.
- (2) File one of such duplicate originals in his office.
- (3) Deliver the other duplicate original 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.

General duties of secretary of state, see  
Vernon's Ann.Civ.St. art. 4331.

#### Art. 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 street address of its then registered office.
- (3) If the street address of its registered office is to be changed, the street address to which the registered office is to be changed.
- (4) The name of its then registered agent.
- (5) If the registered agent is to be changed, the name of its successor registered agent.
- (6) That the street address of its registered office, and the street address of the business office of its registered agent, as changed will be identical.

(7) That such change was 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 2.14 C of this Act, by the members.

B. Duplicate originals of such statement shall be executed by the corporation by its president or vice-president, and verified by him and

delivered to the Secretary of State. If the Secretary of State finds that such statement conforms to the provisions of this Act, he shall, when all fees have been paid as prescribed by law:

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

(2) File one of such duplicate originals in his office.

(3) Return the other duplicate original to the corporation or its representative.

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

D. Any registered agent of a corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the Secretary of State, who shall forthwith mail a copy thereof to the corporation at its registered office. The appointment of such agent shall terminate upon the expiration of thirty (30) days after receipt of such notice by the Secretary of State.

### Art. 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.

Issuance of citations, see Vernon's Texas  
Rules of Civil Procedure, Rule 99 et seq.

### Art. 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.

#### Art. 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 2.14 C of this Act, 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.

#### Art. 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 (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.

#### Art. 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.

#### **Art. 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.

#### **Art. 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.

**Art. 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.

**Art. 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.

**Art. 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.

**Art. 2.17. Quorum of Directors**

A. A majority of the number of directors fixed by the by-laws, or, in the absence of a by-law fixing the number of directors, a majority of the number stated in the articles of incorporation, 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 of directors, unless the act of a greater number is required by the articles of incorporation or the by-laws.

**Art. 2.18. Committees**

A. If the articles of incorporation or the by-laws so provide, the board of directors, by resolution adopted by a majority of the directors in office, may designate one or more committees of directors, each of which committees shall consist of two or more directors, which committees, to the extent provided in such resolution, in the articles of incorporation or in the by-laws of the corporation, shall have and exercise the authority of the board of directors in the management of the corporation; but 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 by-laws. Membership on such committees may, but need not be, limited to directors.

**Art. 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 by-laws. Special meetings of the board of directors shall be held upon such notice as is prescribed in the by-laws. 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 by-laws.

**Art. 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 by-laws. 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 2.14 C of this Act, 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 by-laws 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 by-laws.

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.

**Art. 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.

**Art. 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.

**Art. 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.

**Art. 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.

**Art. 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.

**Art. 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.

### Art. 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 twenty-one (21) years or more may act as incorporators of a corporation by signing, verifying, and delivering in duplicate to the Secretary of State articles of incorporation for such corporation.

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.

Allegation of incorporation, see Vernon's Texas Rules of Civil Procedure, Rule 52.

Verification of plea of non-incorporation, see Vernon's Texas Rules of Civil Procedure, Rule 93.

### Art. 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 2.14 C of this Act, a statement to that effect.
- (7) Any provision, not inconsistent with law, including any provision which under this Act is required or permitted to be set forth in the by-laws, 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.
- (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.

### **Art. 3.03. Filing of Articles of Incorporation**

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

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

(2) File one of such duplicate originals in his office.

(3) Issue a certificate of incorporation to which he shall affix the other duplicate original.

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

### **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.

### **Art. 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 2.14 C of this Act, 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.

#### 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 are lawful under this Act.

#### Art. 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 2.14 C of this Act, 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.

#### Art. 4.03. Articles of Amendment

A. The articles of amendment shall be executed in duplicate by the corporation by its president or by a vice-president and by its secretary or an assistant secretary, 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.

#### Art. 4.04. Filing of Articles of Amendment

A. Duplicate originals 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 each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof.

(2) File one of such duplicate originals in his office.

(3) Issue a certificate of amendment to which he shall affix the other duplicate original.

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

#### Art. 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.

#### Art. 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 2.14 C 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.

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 2.14 C 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 in duplicate 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. Duplicate originals of the restated articles of incorporation shall be delivered to the Secretary of State. If the Secretary of State finds that the restated articles of incorporation conform to law, he shall, when all fees and franchise taxes have been paid as required by law:

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

(2) File one of such duplicate originals in his office.

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

E. The restated certificate of incorporation, together with the duplicate original 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.

#### **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. 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.

#### **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. 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.

#### **Art. 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 2.14 C of this Act, 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.

#### Art. 5.04. Articles of Merger or Consolidation of Domestic Corporations

A. Upon such approval, articles of merger or articles of consolidation shall be executed in duplicate 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. Duplicate originals 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 each of such duplicate originals the word "Filed," and the month, day and year of the filing thereof.

(2) File one of such duplicate originals in his office.



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

C. The certificate of merger or certificate of consolidation, together with the duplicate original 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.

**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.

**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 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.

**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 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) Each foreign corporation, if it is to transact business in this State, shall file with the Secretary of State of this State within thirty (30) days after the merger or consolidation, as the case may be, shall become effective, a copy of the plan, articles, or other document filed in the state of its incorporation for the purpose of effecting the merger or consolidation, certified by the public officer having custody of the original.

(3) 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.

(4) 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.

#### 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 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 constitute prima facie evidence that such resolution of the board of directors or members was duly adopted.

#### Art. 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 2.14 C of this Act, 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 2.14 C 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.

#### Art. 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 2.14 C of this Act, 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.

Abatement of dissolution suit, see Vernon's Texas Rules of Civil Procedure, Rule 160.

Claim against dissolved corporation, see Vernon's Texas Rules of Civil Procedure, Rule 29.

### Art. 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.

### Art. 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 pur-

pose 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 2.14 C of this Act, 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.

#### Art. 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 2.14 C of this Act, 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.

#### Art. 6.05. Article of Dissolution

A. If voluntary dissolution proceedings<sup>1</sup> 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 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 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.

<sup>1</sup> So in enrolled bill.

#### Art. 6.06. Filing of Articles of Dissolution

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

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

(2) File one of such duplicate originals in his office.

(3) Issue a certificate of dissolution to which he shall affix the other duplicate original.

B. The certificate of dissolution, together with the duplicate original 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.

#### 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 in 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 corporation has failed to file the report requested by the Secretary of State, as provided in this Act, within the time required by law, or has failed to pay any fees or penalties prescribed by law, when the same have become due and payable; or

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

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

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

(6) 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.



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

A. The Secretary of State, from time to time, shall certify to the Attorney General the names of all corporations, both domestic and foreign, which have failed to file the report required by Article 9.01 of this Act in accordance with the provisions thereof, together with the facts pertinent thereto. The Secretary of State shall also certify, from time to time, the names of all corporations which have given other cause for dissolution 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 pertaining to the failure of any such corporation to file such report 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

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

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.

### 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 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.

Change of venue in civil and criminal cases, see Const. art. 3, § 45.

Venue, general rule, see Vernon's Ann. Civ.St. art. 1995.

Continuance and change of venue, see Vernon's Texas Rules of Civil Procedure, Rule 251 et seq.

### 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 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.

Receivers, generally, see Vernon's Ann. Civ.St. art. 2293, et seq.; Vernon's Texas Rules of Civil Procedure, Rule 695 et seq.

#### **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 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 re-

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

stored to the directors and officers, the receiver being directed to redeliver to the corporation all its remaining properties and assets.

**Art. 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.

**Art. 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 busi-

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

ness 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.

Powers and duties of receivers, see Vernon's Ann.Civ.St. art. 2297.

Qualifications of receivers, see Vernon's Ann.Civ.St. art. 2294.

#### Art. 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.

Bringing in additional parties, see Vernon's Texas Rules of Civil Procedure, Rule 37.

Suit on claim against dissolved corporation, see Vernon's Texas Rules of Civil Procedure, Rule 29.

#### Art. 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.

#### 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.

#### Art. 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.

#### 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 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.

Abatement and revival, generally, see  
Vernon's Ann.Civ.St. art. 4671 et seq.

#### Art. 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.

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

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.

Foreign corporations, generally, see Vernon's Ann.Civ.St. art. 1529 et seq.; V.A. T.S. Bus.Corp. Act, art. 8.01 et seq.

### Art. 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.



**Art. 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.

**Art. 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.

(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 in duplicate 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.

**Art. 8.05. Filing of Application for Certificate of Authority**

A. Duplicate originals of the application of the corporation for a certificate of authority shall be delivered to the Secretary of State, together with a copy of its articles of incorporation and all amendments thereto, duly authenticated by the proper officer of the state or country under the laws of which it is incorporated. 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 one of such duplicate originals of the application and the copy of the articles of incorporation and amendments thereto.

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

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

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

#### Art. 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.

#### Art. 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.

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

B. Such statement shall be executed in duplicate 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. Duplicate originals 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 each of such duplicate originals the word "Filed," and the month, day and year of the filing thereof.

(2) File one of such duplicate originals in his office.

(3) Return the other of such duplicate originals 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.

**Art. 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.

**Art. 8.10. Amendment to Articles of Incorporation of Foreign Corporation**

A. Whenever the articles of incorporation of a foreign corporation authorized to conduct affairs in this State are amended such foreign corporation shall, within thirty (30) days after such amendment becomes effective, file in the office of the Secretary of State a copy of such amendment duly authenticated by the proper officer of the state or country under the laws of which it is incorporated; but the filing thereof shall not of itself enlarge or alter the purpose or purposes which such corporation is authorized to pursue in conducting its affairs in this State, nor authorize such corporation to conduct affairs in this State under any other name than the name set forth in its certificate of authority.

**Art. 8.11. Merger of Foreign Corporation Authorized to Conduct Affairs in this State**

A. Whenever a foreign corporation authorized to conduct affairs in this State shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is incorporated, and such corporation shall be the surviving corporation, it shall, within thirty (30) days after such merger becomes effective, file with the Secretary of State a copy of the articles of merger duly authenticated by the proper officer of the state or country under the laws of which such statutory merger was effected; and it shall not be necessary for such corporation to procure either a new or amended certificate of authority to conduct affairs in this State unless the name of such corporation be

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

changed thereby or unless the corporation desires to pursue in this State other or additional purposes than those which it is then authorized to pursue in this State.

#### Art. 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. The requirements in respect to the form and contents of such application, the manner of its execution, the filing of duplicate originals thereof 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.

#### Art. 8.13. Withdrawal 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.

#### Art. 8.14. Filing of Application for Withdrawal

A. Duplicate originals 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 each of such duplicate originals the word "Filed", and the month, day and year of the filing thereof.
- (2) File one of such duplicate originals in his office.
- (3) Issue a certificate of withdrawal to which he shall affix the other duplicate original.

B. The certificate of withdrawal, together with the duplicate original 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 authority of the corporation to conduct affairs in this State shall cease.

#### Art. 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 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 corporation has failed to file its annual report within the time required by law, or has failed to pay any fees or penalties prescribed by law when the same have become due and payable; or
- (3) The certificate of authority to conduct affairs in this State or any amendment thereof was procured through fraud; or
- (4) 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
- (5) The corporation has failed to maintain a registered agent in this State as required by law; or
- (6) 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; or
- (7) The corporation has failed to file in the office of the Secretary of State any amendment to its articles of incorporation or any articles of merger or consolidation within the time prescribed by this Act; or
- (8) The corporation has changed its corporate name and has failed to file with the Secretary of State, within thirty (30) 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.

#### Art. 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.

#### Art. 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 cor-

poration 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 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 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.

#### Art. 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.

**Art. 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, 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 at any time prior to the filing of suit for involuntary dissolution or to cancel the certificate of authority of such corporation as provided in this Act, 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).

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 re-

vival fee within one hundred and twenty (120) days after such forfeiture, such failure shall constitute sufficient ground for the involuntary dissolution of the corporation or the revocation of its certificate of authority as provided in this Act. The Secretary of State shall periodically certify to the Attorney General the names of all corporations whose right to conduct affairs within this State shall have been forfeited as herein provided, and upon receiving such certificates the Attorney General shall forthwith institute suit against such corporations as provided in this Act.

#### Art. 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, One Dollar (\$1).

(5) Filing articles of dissolution, One Dollar (\$1).

(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 a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to conduct affairs in this State, Twenty-five Dollars (\$25).

(9) Filing a copy of articles of merger of a foreign corporation holding a certificate of authority to conduct affairs in this State, Fifty Dollars (\$50).

(10) Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, Five Dollars (\$5).

(11) Filing any other statement or report of a domestic or foreign corporation, One Dollar (\$1).

Fees payable to the secretary of state, see Vernon's Ann.Civ.St. arts. 3914, 3915.

#### Art. 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.

General duties of secretary of state, see Const. art. 4, § 21; Vernon's Ann.Civ.St. art. 4331.

#### Art. 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 disap-



proval 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.

#### **Art. 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.

Reception of evidence, see Vernon's Texas Rules of Civil Procedure, Rule 134.

#### **Art. 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.

#### **Art. 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.

#### **Art. 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.

#### **Art. 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.

#### **Art. 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.

#### **Art. 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.

#### **Art. 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.

#### **Art. 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.

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.

Burial associations, see V.A.T.S. Insurance Code, art. 14.37.

**Art. 10.05. 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, until September 1, 1961.

B. Except as provided in Article 10.06 of this Act, 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.

**Art. 10.06. Repeal of Existing Laws; Extent and Effect thereof**

A. Subject to the provisions of the last two (2) preceding Articles of this Act and of Section B of Article 2.01 of this Act, 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.

**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 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.

Passed the House, March 10, 1959, by a viva-voce vote; and the House concurred in Senate amendments, April 27, 1959, by a viva-voce vote; passed the Senate, as amended, April 23, 1959, by a viva-voce vote.

Approved May 11, 1959.

Effective 90 days after May 12, 1959, date of adjournment.

# FORMS

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## Form

1. Articles of Incorporation.
2. Designation of Registered Office and Appointment of Registered Agent.
3. Statement of Change of Registered Office or Registered Agent, or Both.
4. Articles of Amendment to Articles of Incorporation.
5. Restated Articles of Incorporation (without amendment).
6. Restated Articles of Incorporation (with amendment).
7. Articles of Merger (or Consolidation) of Domestic Corporations.
8. Articles of Merger (or Consolidation) of Domestic and Foreign Corporations.
9. Articles of Dissolution.
10. Application for Certificate of Authority.
11. Application for Amended Certificate of Authority.
12. Application for Certificate of Withdrawal.
13. Statement of Change of Registered Office or Registered Agent, or Both.
14. Adoption of Provisions of Texas Non-Profit Corporation Act by Existing Corporation.
15. Report.  
Verification Form A.  
Verification Form B.  
Verification Form C.

The following forms are promulgated pursuant to the Texas Non-Profit Corporation Act (House Bill No. 145, Acts of the 56th Legislature, Regular Session, 1959), which became effective this date.

The forms carry a mandatory or permissive designation and, in addition, indicate the applicable statutory filing fee.

August 11, 1959

ZOLLIE STEAKLEY  
*Secretary of State*

Non-Profit Form No. 1  
(Permissive)

Filing fee: \$25.00  
(\$10.00 for church)

## ARTICLES OF INCORPORATION OF

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We, the undersigned natural persons of the age of twenty-one years or more, at least two of whom are citizens of the State of Texas, acting as incorporators of a corporation under the Texas Non-Profit Corporation Act, do hereby adopt the following Articles of Incorporation for such corporation:

ARTICLE ONE

The name of the corporation is \_\_\_\_\_.

ARTICLE TWO

The corporation is a non-profit corporation.

ARTICLE THREE

The period of its duration is \_\_\_\_\_.

ARTICLE FOUR

The purpose or purposes for which the corporation is organized are:

\_\_\_\_\_  
\_\_\_\_\_

ARTICLE FIVE

The street address of the initial registered office of the corporation is \_\_\_\_\_, and the name of its initial registered agent at such address is \_\_\_\_\_.

ARTICLE SIX

The number of directors (or trustees) constituting the initial board of directors (or trustees) of the corporation is \_\_\_\_\_, and the names and addresses of the persons who are to serve as the initial directors (or trustees) are:

Name	Address
_____	_____
_____	_____
_____	_____

ARTICLE SEVEN

The name and street address of each incorporator is:

Name	Address
_____	_____
_____	_____
_____	_____

ARTICLE EIGHT

(Insert any additional provisions required or permitted to be set forth in the Articles of Incorporation by the Texas Non-Profit Corporation Act for the regulation of the internal affairs of the corporation.)

IN WITNESS WHEREOF, we have hereunto set our hands, this \_\_\_\_\_ day of \_\_\_\_\_, 19—.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Add Verification Form A)

Non-Profit Form No. 2  
(Permissive)

Filing Fee: \$1.00

**DESIGNATION OF REGISTERED OFFICE AND APPOINTMENT  
OF REGISTERED AGENT OF**

Pursuant to the provisions of Article 2.05 of the Texas Non-Profit Corporation Act, the undersigned corporation designates the following as its registered office and appoints the following as its registered agent:

1. The name of the corporation is \_\_\_\_\_.
2. The street address of its registered office is \_\_\_\_\_.
3. The name of its registered agent is \_\_\_\_\_.
4. The street address of its registered agent is \_\_\_\_\_.

5. The street address of its registered office and the street address of its registered agent are the same.

(Insert the following if the management of the corporation is vested in its Board of Directors)

6. Such designation and appointment were authorized by resolution duly adopted by its board of directors.

(Or insert the following if the corporation is a church and its management is vested in its members pursuant to Article 2.14C)

"Such designation and appointment were authorized by the members at a meeting of members held on \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at which a quorum was present and such designation and appointment received at least a majority of the votes which members present or represented by proxy at such meeting were entitled to cast." (unless the vote of a greater number is required by the articles of incorporation, or the by-laws.)

\_\_\_\_\_  
Name of Corporation  
By \_\_\_\_\_  
Its \_\_\_\_\_ President

(Add Verification Form B)

Non-Profit Form No. 3  
(Permissive)

Filing Fee: \$1.00

**STATEMENT OF CHANGE OF REGISTERED OFFICE  
OR REGISTERED AGENT, OR BOTH,  
OF**

Pursuant to the provisions of Article 2.06 of the Texas Non-Profit Corporation Act, the undersigned corporation, submits the following statement for the purpose of changing its registered office or its registered agent, or both, in the State of Texas:

1. The name of the corporation is \_\_\_\_\_.

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

2. The street address of its present registered office is \_\_\_\_\_  
\_\_\_\_\_.
3. The street address to which its registered office is to be changed is \_\_\_\_\_.
4. The name of its present registered agent is \_\_\_\_\_.
5. The name of its successor registered agent is \_\_\_\_\_.
6. The street address of its registered office and the street address of the business office of its registered agent, as changed, will be identical.
7. Such change was authorized by resolution duly adopted by its board of directors (trustees or members, if applicable).

Dated \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Name of Corporation

By \_\_\_\_\_

Its \_\_\_\_\_ President

(Add Verification Form B)

Non-Profit Form No. 4  
(Permissive)

Filing fee: \$25.00  
(\$10.00 for church)

**ARTICLES OF AMENDMENT  
TO THE  
ARTICLES OF INCORPORATION  
OF**

Pursuant to the provisions of Article 4.03 of the Texas Non-Profit Corporation Act, the undersigned corporation adopts the following Articles of Amendment to its Articles of Incorporation which:

(State briefly the general effect of the amendment)

1. The name of the corporation is \_\_\_\_\_.
2. The following amendment to the Articles of Incorporation was adopted by the corporation on \_\_\_\_\_, 19\_\_\_\_.

(Insert the amendment in the following form if it alters any provisions of the original or amended Articles of Incorporation)

Article \_\_\_\_\_ of the Articles of Incorporation is hereby amended so as to read as follows: (Copy)

(Insert the amendment in the following form if it is an addition to the original or amended Articles of Incorporation)

The Articles of Incorporation are hereby amended by adding thereto a new Article \_\_\_\_\_ reading as follows: (Copy)

(Insert the amendment in the following form if it is a deletion from the original or amended Articles of Incorporation)



The Articles of Incorporation are hereby amended by deleting therefrom Article \_\_\_\_\_ which reads as follows: (Copy)

3. The amendment was adopted in the following manner:

(Insert the applicable statement under (1) or (2) below)

(1) Where there are members having voting rights insert either (a) or (b):

- (a) "The amendment was adopted at a meeting of members held on \_\_\_\_\_, 19\_\_\_\_, at which a quorum was present, and the amendment received at least two-thirds of the votes which members present or represented by proxy at such meeting were entitled to cast." \*
- (b) "The amendment was adopted by consent in writing by all members entitled to vote with respect thereto."

(2) Where there are no members, or no members having voting rights, insert the following statement:

"The amendment was adopted at a meeting of the board of directors held on \_\_\_\_\_, 19\_\_\_\_, and received the vote of a majority of the directors in office, there being no members having voting rights in respect thereof."

Dated \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
 Name of Corporation  
 By \_\_\_\_\_  
 Its \_\_\_\_\_ President  
 and \_\_\_\_\_  
 Its \_\_\_\_\_ Secretary

(Add Verification Form B)

\* Note: 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), the statement must be made that the amendment received at least two-thirds of the votes which the members of any such class who were present at such meeting in person or by proxy were entitled to cast.

Non-Profit Form No. 5  
(Permissive)

Filing fee: \$25.00  
(\$10.00 for church)

RESTATED ARTICLES OF INCORPORATION  
(without amendment)  
OF

1. \_\_\_\_\_ (Name of corporation) \_\_\_\_\_, pursuant to the provisions of Article 4.06 of the Texas Non-Profit Corporation Act, hereby adopts Restated Articles of Incorporation which accurately copy the Articles of Incorporation and all amendments thereto that are in effect to date and such Restated Articles of Incorporation contain no change in any provision thereof.

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

2. The Restated Articles of Incorporation were adopted in the following manner:

(Insert the applicable statement under (1) or (2) below)

(1) Where there are members having voting rights insert either (a) or (b):

(a) "The Restated Articles of Incorporation were adopted at a meeting of members held on \_\_\_\_\_, 19\_\_\_, at which a quorum was present, and the Restated Articles of Incorporation received at least two-thirds of the votes which members present or represented by proxy at such meeting were entitled to cast." \*

(b) "The Restated Articles of Incorporation were adopted by consent in writing by all members entitled to vote with respect thereto."

(2) Where there are no members, or no members having voting rights, insert the following statement:

"The Restated Articles of Incorporation were adopted at a meeting of the board of directors held on \_\_\_\_\_, 19\_\_\_, and received the vote of a majority of the directors in office, there being no members having voting rights in respect thereof."

3. The Articles of Incorporation and all amendments and supplements thereto are hereby superseded by the following Restated Articles of Incorporation which accurately copy the entire text thereof:

(Here insert restated articles)

Dated \_\_\_\_\_, 19\_\_\_.

\_\_\_\_\_  
Name of corporation  
By \_\_\_\_\_  
Its \_\_\_\_\_ President  
And \_\_\_\_\_  
Its \_\_\_\_\_ Secretary

(Add Verification Form B)

\* Note: 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), the statement must be made that the Restated Articles of In-

corporation received at least two-thirds of the votes which the members of any such class who were present at such meeting in person or by proxy were entitled to cast.

Non-Profit Form No. 6  
(Permissive)

Filing fee: \$25.00  
(\$10.00 for church)

RESTATED ARTICLES OF INCORPORATION  
(with amendment)  
OF

1. \_\_\_\_\_ (Name of corporation) \_\_\_\_\_, pursuant to the provisions of Article 4.06 of the Texas Non-Profit Corporation Act, hereby adopts Restated Articles of Incorporation which accurately copy the Articles of Incorporation and all amendments thereto that are in effect to date

and as further amended by such Restated Articles of Incorporation as hereinafter set forth and which contain no other change in any provision thereof.

2. The Articles of Incorporation of the corporation are amended by the Restated Articles of Incorporation as follows:

(Here set forth amendment or amendments)

3. Each such amendment made by these Restated Articles of Incorporation has been effected in conformity with the provisions of the Texas Non-Profit Corporation Act and such Restated Articles of Incorporation were duly adopted in the following manner:

(Insert the applicable statement under (1) or (2) below)

(1) Where there are members having voting rights insert either (a) or (b):

(a) "The Restated Articles of Incorporation as so amended were adopted at a meeting of members held on \_\_\_\_\_, 19\_\_\_\_, at which a quorum was present, and the Restated Articles of Incorporation as so amended received at least two-thirds of the votes which members present or represented by proxy at such meeting were entitled to cast."\*

(b) "The Restated Articles of Incorporation as so amended were adopted by consent in writing by all members entitled to vote with respect thereto."

(2) Where there are no members, or no members having voting rights, insert the following statement:

"The Restated Articles of Incorporation as so amended were adopted at a meeting of the board of directors held on \_\_\_\_\_, 19\_\_\_\_, and received the vote of a majority of the directors in office, there being no members having voting rights in respect thereof."

4. The Articles of Incorporation and all amendments and supplements thereto are hereby superseded by the following Restated Articles of Incorporation which accurately copy the entire text thereof and as amended as above set forth: (Here insert restated articles)

Dated \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Name of corporation

By \_\_\_\_\_

Its \_\_\_\_\_ President

By \_\_\_\_\_

Its \_\_\_\_\_ Secretary

(Add Verification Form B)

\* Note: 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), the statement must be made that the Restated Articles of In-

corporation as so amended received at least two-thirds of the votes which the members of any such class who were present at such meeting in person or by proxy were entitled to cast.

Non-Profit Form No. 7  
(Permissive)

Filing fee: \$50.00

**ARTICLES OF MERGER (OR CONSOLIDATION)  
OF DOMESTIC CORPORATIONS**

Pursuant to the provisions of Article 5.04 of the Texas Non-Profit Corporation Act, the undersigned corporations adopt the following Articles of Merger (or Consolidation) for the purpose of merging them into one of such corporations (or consolidating them into a new corporation):

1. The following Plan of Merger (or Consolidation) was approved by the members of each of the undersigned corporations in the manner prescribed by the Texas Non-Profit Corporation Act: (Copy)

2. As to each of the undersigned corporations, the Plan of Merger (or Consolidation) was adopted in the following manner:

(Insert the applicable statement under (1) or  
(2) below:

(1) Where there are members having voting rights insert either  
(a) or (b):

(a) "The Plan of Merger (or Consolidation) was adopted at a meeting of members held on \_\_\_\_\_, 19\_\_\_\_, at which a quorum was present, and the Plan of Merger (or Consolidation) received at least two-thirds of the votes which members present or represented by proxy at such meeting were entitled to cast." \*

(b) "The Plan of Merger (or Consolidation) was adopted by consent in writing by all members entitled to vote with respect thereto."

(2) Where there are no members, or no members having voting rights, insert the following statement:

"The Plan of Merger (or Consolidation) was adopted at a meeting of the board of directors held on \_\_\_\_\_, 19\_\_\_\_, and received the vote of a majority of the directors in office, there being no members having voting rights in respect thereof."

Dated \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Name of corporation

By \_\_\_\_\_

Its \_\_\_\_\_ President

And \_\_\_\_\_

Its \_\_\_\_\_ Secretary

\_\_\_\_\_  
Name of corporation

By \_\_\_\_\_

Its \_\_\_\_\_ President

And \_\_\_\_\_

Its \_\_\_\_\_ Secretary

(Add Verification Form B for each corporation)

\* See note on page 144

\* Note: 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), the statement must be made that the Plan of Merger (or Consoli-

dation) received at least two-thirds of the votes which the members of any such class who were present at such meeting in person or by proxy were entitled to cast.

Non-Profit Form No. 8  
(Permissive)

Filing fee: \$50.00

ARTICLES OF MERGER (OR CONSOLIDATION) OF  
DOMESTIC AND FOREIGN CORPORATIONS

Pursuant to the provisions of Article 5.07 of the Texas Non-Profit Corporation Act, the undersigned corporations adopt the following Articles of Merger (or Consolidation) for the purpose of merging them into one of such corporations (or consolidating them into a new corporation):

1. The names of the undersigned corporations and the States and the laws of which they are respectively organized are:

Name of corporation

State

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. The laws of the State under which such foreign corporation is organized permit such Merger (or Consolidation).

3. The name of the surviving corporation is \_\_\_\_\_, and it is to be governed by the laws of the State of \_\_\_\_\_.

4. There is attached hereto a copy of the Plan of Merger (or Consolidation) filed in the State of \_\_\_\_\_ and certified to by the public official having custody thereof.

5. The following Plan of Merger (or Consolidation) was approved by the members of the undersigned domestic corporation in the manner prescribed by the Texas Non-Profit Corporation Act, and was approved by the undersigned foreign corporation in the manner prescribed by the laws of the State under which it is organized: (Copy)

6. As to the undersigned domestic corporation, the Plan of Merger (or Consolidation) was adopted in the following manner:

(Insert the applicable statement under (1) or (2) below)

(1) Where there are members having voting rights insert either (a) or (b):

(a) "The Plan of Merger (or Consolidation) was adopted at a meeting of members held on \_\_\_\_\_, 19\_\_\_\_, at which a quorum was present, and the Plan of Merger (or Consolidation) received at least two-thirds of the votes which members present or represented by proxy at such meeting were entitled to cast." \*

\*See note on page 145.

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

(b) "The Plan of Merger (or Consolidation) was adopted by consent in writing by all members entitled to vote with respect thereto."

(2) Where there are no members, or no members having voting rights, insert the following statement:

"The Plan of Merger (or Consolidation) was adopted at a meeting of the board of directors held on \_\_\_\_\_, 19—, and received the vote of a majority of the directors in office, there being no members having voting rights in respect thereof."

(If the surviving or new corporation is to be foreign, add the following:)

7. \_\_\_\_\_, the surviving (or new) corporation hereby: (a) agrees that it may be served by process in the State of Texas in any proceeding for the enforcement of any obligation of the undersigned domestic corporation; and (b) irrevocably appoints the Secretary of State of Texas as its agent to accept service of process in any such proceeding.

Dated \_\_\_\_\_, 19—.

\_\_\_\_\_  
Name of Corporation  
By \_\_\_\_\_  
Its \_\_\_\_\_ President  
And \_\_\_\_\_  
Its \_\_\_\_\_ Secretary

\_\_\_\_\_  
Name of Corporation  
By \_\_\_\_\_  
Its \_\_\_\_\_ President  
And \_\_\_\_\_  
Its \_\_\_\_\_ Secretary

(Add Verification Form B for each corporation)

\* Note: 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), the statement must be made that the Plan of Merger (or Consoli-

dation) received at least two-thirds of the votes which the members of any such class who were present at such meeting in person or by proxy were entitled to cast.

Non-Profit Form No. 9  
(Permissive)

Filing fee: \$1.00

ARTICLES OF DISSOLUTION  
OF

Pursuant to the provisions of Article 6.05 of the Texas Non-Profit Corporation Act, the undersigned corporation adopts the following Articles of Dissolution for the purpose of dissolving the corporation:

1. The name of the corporation is \_\_\_\_\_.
2. A resolution to dissolve was adopted in the following manner:  
(Insert the applicable statement under (1) or (2) below)

(1) Where there are members having voting rights insert either (a) or (b):

(a) "The resolution to dissolve was adopted at a meeting of members held on \_\_\_\_\_, 19—, at

which a quorum was present, and the resolution to dissolve received at least two-thirds of the votes which members present or represented by proxy at such meeting were entitled to cast." \*

(b) "The resolution to dissolve was adopted by consent in writing by all members entitled to vote with respect thereto."

(2) Where there are no members, or no members having voting rights, insert the following statement:

"The resolution to dissolve was adopted at a meeting of the board of directors held on \_\_\_\_\_, 19\_\_\_\_, and received the vote of a majority of the directors in office, there being no members having voting rights in respect thereof."

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

4. All remaining property and assets of the corporation have been transferred, conveyed or distributed in accordance with the provisions of the Texas Non-Profit Corporation Act.

(Insert the following if applicable)

"The assets of the corporation were received and held subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes and were not held upon a condition requiring return, transfer or conveyance by reason of the dissolution and the assets were distributed in accordance with the following plan of distribution:"

(Set forth a copy of the plan of distribution)

5. There are no suits pending against the corporation in any court. (or "Adequate provision have been made for the satisfaction of any judgment, order or decree which may be entered against it in any pending suit.")

Dated \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Name of corporation

By \_\_\_\_\_

Its \_\_\_\_\_ President

And \_\_\_\_\_

Its \_\_\_\_\_ Secretary

(Add Verification Form B)

\* Note: 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), the statement must be made that the resolution to dissolve re-

ceived at least two-thirds of the votes which the members of any such class who were present at such meeting in person or by proxy were entitled to cast.

Non-Profit Form No. 10  
(Mandatory)

Filing fee: \$25.00

APPLICATION FOR CERTIFICATE OF AUTHORITY  
OF

To the Secretary of State  
of the State of Texas:

Pursuant to the provisions of Article 8.04 of the Texas Non-Profit Corporation Act, the undersigned corporation hereby applies for a Certificate of Authority to conduct affairs in your State, and for that purpose submits the following statement:

1. The name of the corporation is \_\_\_\_\_.
2. The corporation is a non-profit corporation.
3. It is incorporated under the laws of \_\_\_\_\_.
4. The date of its incorporation is \_\_\_\_\_  
and the period of its duration is \_\_\_\_\_.
5. The address of its principal office in the state or country under the laws of which it is incorporated is \_\_\_\_\_.
6. The street address of its proposed registered office in your State is \_\_\_\_\_, and the name of its proposed registered agent in your State at such address is \_\_\_\_\_.
7. The purpose or purposes which it proposes to pursue in conducting its affairs in your State are:
8. The names and respective addresses of its directors and officers are:

<u>Name</u>	<u>Office</u>	<u>Address</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

9. This application is accompanied by a copy of its Articles of Incorporation and all amendments thereto, duly authenticated by the proper officer of the state or country under the laws of which it is incorporated.

Dated \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
 Name of corporation  
 By \_\_\_\_\_  
 Its \_\_\_\_\_  
 (Authorized Officer)

(Add Verification Form C)



Non-Profit Form No. 11  
(Mandatory)

Filing fee: \$25.00

APPLICATION FOR AMENDED CERTIFICATE OF AUTHORITY  
OF

To the Secretary of State  
of the State of Texas:

Pursuant to the provisions of Article 8.12 of the Texas Non-Profit Corporation Act, the undersigned corporation hereby applies for an Amended Certificate of Authority to conduct affairs in the State of Texas and for that purpose submits the following statement:

1. A Certificate of Authority was issued to the corporation by your office on \_\_\_\_\_, 19\_\_\_\_, authorizing it to conduct affairs in the State of Texas under the name of \_\_\_\_\_.

2. Its corporate name has been changed to \_\_\_\_\_.

(Note: If the corporate name has not changed, insert "No change")

3. It desires to pursue in the conduct of affairs in the State of Texas other or additional purposes than those set forth in its prior application for Certificate of Authority, as follows:

(Note: If no other additional purposes are proposed, insert "No change")

Dated \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Name of corporation

By \_\_\_\_\_

Its \_\_\_\_\_

(Authorized Officer)

(Add Verification Form C)

Non-Profit Form No. 12  
(Mandatory)

Filing fee: \$5.00

APPLICATION FOR  
CERTIFICATE OF WITHDRAWAL  
OF

To the Secretary of State  
of the State of Texas:

Pursuant to the provisions of Article 8.13 of the Texas Non-Profit Corporation Act, the undersigned corporation hereby applies for a Certificate of Withdrawal from the State of Texas, and for that purpose submits the following statement:

1. The name of the corporation is \_\_\_\_\_.

2. It is incorporated under the laws of \_\_\_\_\_.

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

- 3. It is not conducting affairs in the State of Texas.
- 4. It hereby surrenders its authority to conduct affairs in said State.
- 5. It revokes the authority of its registered agent in the State of Texas 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 the State of Texas during the time it was authorized to conduct affairs therein may thereafter be made on it by service thereof on the Secretary of State of Texas.

6. The 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 is \_\_\_\_\_.

7. All sums due or accrued by this corporation to the State of Texas have been paid or adequate provision has been made for the payment thereof.

8. All known creditors or claimants have been paid or provided for and the corporation is not involved in or threatened with litigation in any court in the State of Texas, or adequate provision has been made for the satisfaction of any judgment, order or decree which may be entered against it in any pending suits.

\_\_\_\_\_  
 Name of Corporation  
 By \_\_\_\_\_  
 Its \_\_\_\_\_  
 (Authorized Officer)

(Add Verification Form C)

Non-Profit Form No. 13  
(Permissive)

Filing fee: \$1.00

**STATEMENT OF CHANGE OF REGISTERED OFFICE  
 OR REGISTERED AGENT, OR BOTH,  
 OF**

To the Secretary of State  
of the State of Texas:

Pursuant to the provisions of Article 8.08 of the Texas Non-Profit Corporation Act, the undersigned corporation, organized under the laws of the State of \_\_\_\_\_ submits the following statement for the purpose of changing its registered office or its registered agent, or both in the State of Texas:

- 1. The name of the corporation is \_\_\_\_\_.
- 2. The street address of its present registered office is \_\_\_\_\_.
- 3. The street address to which its registered office is to be changed is \_\_\_\_\_.
- 4. The name of its present registered agent is \_\_\_\_\_.

- 5. The name of its successor registered agent is \_\_\_\_\_.
  - 6. The street address of its registered office and the street address of the business office of its registered agent, as changed, will be identical.
- Dated \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
 Name of corporation  
 By \_\_\_\_\_  
 Its \_\_\_\_\_  
 (Authorized Officer)

(Add Verification Form C)

Non-Profit Form No. 14  
(Permissive)

Filing fee: \$1.00

**ADOPTION OF PROVISIONS OF  
 TEXAS NON-PROFIT CORPORATION ACT BY  
 EXISTING CORPORATION**

Pursuant to the provisions of Article 10.04 of the Texas Non-Profit Corporation Act, the undersigned corporation submits the following for the purpose of adopting the provisions of the Texas Non-Profit Corporation Act:

- 1. The name of the corporation is \_\_\_\_\_.
  - 2. Each resolution adopted by the board of directors and/or the members, in accordance with the procedure prescribed in the Texas Non-Profit Corporation Act for the amendment of articles of incorporation is as follows: (Copy)
  - 3. The date of adoption of each resolution is:
    - a. Board of Directors: \_\_\_\_\_.
    - b. Members: \_\_\_\_\_.
  - 4. The street address of its initial registered office is \_\_\_\_\_; the name of its initial registered agent at such address is \_\_\_\_\_.
- Dated \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
 Name of corporation  
 By \_\_\_\_\_  
 Its \_\_\_\_\_ President  
 And \_\_\_\_\_  
 Its \_\_\_\_\_ Secretary

(Add Verification Form B)

Non-Profit Form No. 15  
(Mandatory)

Filing fee: \$1.00

REPORT  
OF

To the Secretary of State  
of the State of Texas:

Pursuant to the provisions of Article 9.01 of the Texas Non-Profit Corporation Act, the undersigned corporation hereby files its report setting forth:

1. The name of the corporation is \_\_\_\_\_.
2. It is incorporated under the laws of \_\_\_\_\_.
3. The street address of the registered office of the corporation in the State of Texas is \_\_\_\_\_.
4. The name of its registered agent at such address is \_\_\_\_\_.
5. If a foreign corporation, the address of its principal office in the State or country under the laws of which it is incorporated is \_\_\_\_\_.
6. The names and respective addresses of its directors and officers are:

Name	Office	Address
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

7. The foregoing information is given as of the date of the execution of this report.

Dated \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
 Name of corporation  
 By \_\_\_\_\_  
 Its \_\_\_\_\_  
 (Authorized Officer)

(Add Verification Form C)

VERIFICATION FORM A

STATE OF \_\_\_\_\_ }  
 COUNTY OF \_\_\_\_\_ }

I, \_\_\_\_\_, a Notary Public, do hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, personally appeared before me, \_\_\_\_\_, and \_\_\_\_\_, who each being by me first duly sworn, severally declared that they are the persons who signed the foregoing

document as incorporators, and that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year above written.

\_\_\_\_\_  
Notary Public in and for  
\_\_\_\_\_  
County, \_\_\_\_\_.

(Notarial Seal)

My commission expires: \_\_\_\_\_

Note: Verification in this form must be made by each of the incorporators in the case of Form No. 1.

VERIFICATION FORM B

STATE OF \_\_\_\_\_ }  
COUNTY OF \_\_\_\_\_ }

I, \_\_\_\_\_, a Notary Public, do hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, personally appeared before me \_\_\_\_\_, being duly sworn, declared that he is \_\_\_\_\_ of the corporation executing the foregoing document, that he signed the foregoing document in the capacity therein set forth, and that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year before written.

\_\_\_\_\_  
Notary Public in and for  
\_\_\_\_\_  
County, \_\_\_\_\_.

(Notarial Seal)

My commission expires: \_\_\_\_\_

Note: Verification in this form must be made by either the president or vice-president of the corporation in the case of Forms No. 2 and 3; by the president, vice-president, secretary or an assistant secretary of the corporation in the case of other forms calling for Verification Form B.

VERIFICATION FORM C

STATE OF \_\_\_\_\_ }  
COUNTY OF \_\_\_\_\_ }

I, \_\_\_\_\_, a Notary Public, do hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, personally appeared before me \_\_\_\_\_, and, after being duly sworn by me, declared that he signed the foregoing document as the \_\_\_\_\_ of the \_\_\_\_\_, that the same was the act of such corporation, that he was duly authorized to execute the same on behalf of such corporation, and that the statements therein contained are true.

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

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year above written.

\_\_\_\_\_  
Notary Public in and for  
\_\_\_\_\_ County, \_\_\_\_\_.

(Notarial Seal)

My commission expires: \_\_\_\_\_

Note: Verification in this form must be made by a duly authorized officer of the

corporation in the case of Forms No. 10, 11, 12, 13 and 15.

## TITLE 32—CORPORATIONS—PRIVATE

## CHAPTER TWO—CREATION OF CORPORATIONS

Art. 1314a.	Corporation chartered to act as trustee or receiver, executor or	testamentary guardian or to do fiduciary and depository business [New].
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Art. 1314a. Corporation chartered to act as trustee or receiver, executor or testamentary guardian or to do fiduciary and depository business

Amendment of charter; authorization; conformity with  
Business Corporation Act; filing

Section 1. Any corporation heretofore chartered under the provisions of Chapter 2, Title 20, Revised Civil Statutes of Texas, 1879, with the purpose "to act as trustee or assignee or receiver when designated by any person, corporation or court to do so, and to do a general fiduciary and depository business, and to act as executor and testamentary guardian when designated as such by a decedent," as authorized under Subdivision 37, Article 566, Revised Statutes of Texas, 1879, as amended by Chapter 101, Acts, Twenty-second Legislature, 1891, Regular Session, may file an amendment to its present charter with the Secretary of State of Texas on or before July 31, 1960, which amendment shall adopt and conform to the requirements of the Texas Business Corporation Act, being Chapter 64, Acts, Fifty-fourth Legislature, 1955, as amended.<sup>1</sup>

<sup>1</sup> V.A.T.S. Bus. Corp. Act, art. 1.01 et seq.

Transfer and assignment of fiduciary and depository  
business to state bank

Sec. 2. Contemporaneously with the filing of the amendment to its charter as provided in Section 1 hereof, such corporation may transfer and assign to a State bank created under the provisions of the Texas Banking Act of 1943, and particularly Articles 342-301 to 342-307, inclusive, Vernon's Civil Statutes, all of its fiduciary and depository business in which such corporation is named or acting as guardian, trustee, executor, administrator, or in any other fiduciary capacity, whereupon said State bank shall, without the necessity of any judicial action in the courts of the State of Texas or any action by the creator or beneficiary of such trust or estate, continue the guardianship, trusteeship, executorship, administration or other fiduciary relationship, and perform all of the duties and obligations of such corporation, and exercise all of the powers and authority relative thereto now being exercised by such corporation, and provided further that the transfer or assignment by such corporation of such fiduciary and depository business being conducted by it under the powers granted in its original charter, as amended, shall not constitute or be deemed a resignation or refusal to act upon the part of such corporation as to any such guardianship, trust, executorship, administration, or any other fiduciary capacity; and provided further that the naming or designation by a testator or the creator of a living trust of such corporation to act as trustee, guardian, executor, or in any other fiduciary capacity, shall be considered the naming or designation of the State bank and authorizing such State bank to act in said fiduciary capacities.

**Expiration of authority to amend charter and transfer and assign  
fiduciary and depository business**

Sec. 3. The power and authorization herein granted to the Secretary of State to file and approve the amendment to the charter of the corporation heretofore created under the provisions of Subdivision 37, Article 566, Chapter 2, Title 20, Revised Civil Statutes of Texas, 1879, as provided in Section 1 hereof, and the power and authority of such corporation to transfer and assign its fiduciary and depository business to a State bank as provided in Section 2 hereof, shall expire on July 31, 1960, unless prior to such date such corporation shall have tendered the charter amendment for filing to the Secretary of State of Texas.

**Applicability of other laws**

Sec. 4. The General Laws for incorporation and the provisions of the Texas Business Corporation Act (Chapter 64, Acts, Fifty-fourth Legislature, 1955, as amended)<sup>1</sup> shall supplement the provisions of this Act, and shall be applicable to the filing of the charter amendment and the adoption of the provisions of the Texas Business Corporation Act to the extent that they are not inconsistent herewith. Acts 1959, 56th Leg., p. 131, ch. 77.

<sup>1</sup> V.A.T.S. Bus.Corp. Act, art. 1.01 et seq.

Emergency. Effective April 14, 1959.

Authority of private corporation to act as trustee, see art. 1303b.

Incorporation, see V.A.T.S. Bus.Corp. Act, art. 3.01 et seq.

Operation of bank or trust company, adoption of Business Corporation Act, see V.A.T.S. Bus.Corp. Act, art. 2.01.

Purposes of private corporations, see art. 1302.

State banks, powers, see art. 342—301.

Trust companies, powers, see art. 1513.

**CHAPTER FOUR—LANDS**

**Art. 1360. 1176 Sale of surplus**

All private corporations authorized by the laws of Texas to do business in this state, whose main purpose is not the acquisition or ownership of lands, which have or may acquire by lease, purchase or otherwise more land than is necessary to enable them to carry on their business, shall, within fifteen years from the date said land may be acquired, in good faith sell and convey in fee simple all lands so acquired which are not necessary for the transaction of their business. Notwithstanding any other provisions of this Chapter, it shall be lawful for such surplus lands to be conveyed to and acquired by another corporation which may have among its purposes the acquisition, development and sale of such surplus lands; provided, however, that any such acquiring corporation shall in good faith sell and convey any such land on or before the expiration of the aforesaid fifteen year period just as the conveying corporation would have had to do if it had not conveyed such land to the acquiring corporation, and if such acquiring corporation does not so convey such land on or before such time it shall thereafter hold the same subject to the same forfeiture and escheat provisions provided for in this Chapter as though such land were still held by the conveying corporation. As amended Acts 1959, 56th Leg., p. 104, ch. 53, § 1.

Effective 90 days after May 12, 1959, date of adjournment.

Section 2 of the amendatory Act of 1959 repealed all conflicting laws and parts of

laws to the extent of such conflict only and section 3 contained a severability clause.



## CHAPTER NINE—RELIGIOUS, CHARITABLE, AND EDUCATIONAL

## Art. 1396. 1212, 713, 637 Powers

Eminent domain by certain non-profit charitable corporations, see art. 3183b—1.

## Art. 1399. 1214 Lodges

Purposes of non-profit corporations, see V.A.T.S. Non-Profit Corp. Act, art. 2.01.

## Art. 1411. 1226, 708, 632 Power of trustees

Eminent domain by certain non-profit charitable corporations, see art. 3183b—1.

## CHAPTER TEN—PUBLIC UTILITIES

## 3. WATER

## Art. 1434a. Water supply or sewer service corporations

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 charter amendment but there shall never be more than twenty-one (21) members of said Board.

(b) When the Board of Directors shall consist of nine (9) or more members, in lieu of electing the whole number of Directors annually, the by-laws may provide that the Directors be divided into either two (2) or three (3) 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 (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. As amended Acts 1959, 56th Leg., p. 939, ch. 435, § 1.

Emergency. Effective May 30, 1959.

Section 2 of the amendatory Act of 1959 contained a severability clause.

Disruption of water service by picketing or damaging property, see art. 1446a.

Purposes of non-profit corporations, see Texas Non-Profit Corporation Act, pocket part of Volume 3A, art. 2.01.

CHAPTER SEVENTEEN—TRUST COMPANIES AND  
INVESTMENTS

## LOAN AND BROKERAGE COMPANIES

Art. 1524a. Corporations for loaning money and dealing in bonds and securities without banking and discounting privileges; regulations

## Exemption

Sec. 14. The provisions of Section 7 of this Act shall not apply to the sale by a corporation affected by this Act of bonds, debentures, or other capital obligations of a term of five years or more, issued by, and that are the direct obligations of, the corporation selling or offering the same for sale; provided that as to said bonds and debentures or other capital obligations having a term of five years or more, the Securities Commissioner shall have granted a permit for the sale thereof or a registration statement for the sale thereof shall have been effective pursuant to Section 7 of the Texas Securities Act (Acts 1957, 55th Legislature, Chapter 269; Article 581, Revised Statutes of Texas), as amended and in force at the time of such sale. Added Acts 1959, 56th Leg., p. 793, ch. 361, § 1.

Emergency. Effective June 1, 1959.

## TITLE 33—COUNTIES AND COUNTY SEATS

## CHAPTER THREE—CORPORATE RIGHTS AND POWERS

## Article 1572. 1365, 789, 676 County a body corporate

County right of eminent domain within municipality for roads, see art. 6674n—2.

## Art. 1580. 1373, 797, 684 Agents to contract for county

Counties of 100,000 or more

Acts 1939, 46th Leg., Spec.L., p. 602, § 1, as amended Acts 1949, 51st Leg., p. 713, ch. 376, § 1; Acts 1955, 54th Leg., p. 815, ch. 302, § 1; Acts 1957, 55th Leg., p. 382, ch. 185, § 1 read as follows:

"Section 1. (a) In all counties of this State having a population of seventy three thousand (73,000) or more inhabitants according to the last preceding Federal Census, a majority of a Board composed of the Judges of the District Courts and the County Judge of such county, may

appoint a suitable person who shall act as the County Purchasing Agent for such county, who shall hold office, unless removed by said Judges, for a period of two (2) years, or until his successor is appointed and qualified, who shall execute a bond in the sum of Five Thousand Dollars (\$5,000), payable to said County, for the faithful performance of his duties." As amended Acts 1959, 56th Leg., p. 913, ch. 418, § 1.

Emergency. Effective May 30, 1959.

## CHAPTER FIVE—COUNTY SEATS

## Art. 1601. 1395, 817 Subsequent election

County Building Authority Act, see art. 2372o.

## Art. 1603. 1397, 819, 705 Buildings to be provided

County Building Authority Act, see art. 2372o.

## CHAPTER SIX—COUNTY BOUNDARIES

## Art. 1606. 1400, 822 Boundaries as established, adopted, and acts creating continued in force

Gulfward boundary lines of counties bordering on Gulf, see art. 1592a.

Sherman County. Acts 1959, 56th Leg., p. 82, ch. 41, §§ 1, 2, effective 90 days after May 12, 1959, date of adjournment, defined the boundary lines of Sherman County and directed the Commissioners Court of Sherman County to cause the area to be surveyed and to file the field notes in the General Land Office.

## 1. Construction and application

Purpose of this article was to settle and quiet the question of such boundaries, and the statute should be given a liberal construction. *Hamill v. Bahr*, Civ.App., 271 S.W.2d 319.

This article was subject to construction that boundaries of counties as recognized by people living in the community is of evidentiary value. *Id.*

## TITLE 34—COUNTY FINANCES

## I. GENERAL PROVISIONS

Art.  
1641d. Annual independent audit of books, records and accounts in counties of 350,000 or more [New].

## 2. COUNTY AUDITOR

Art.  
1659a. Counties of 800,000; bids for supplies or materials; advertisement; filing [New].

## I. GENERAL PROVISIONS

Art. 1641d. Annual independent audit of books, records and accounts in counties of 350,000 or more

Section 1. In every county in the State of Texas having a population of 350,000 inhabitants or more, according to the last preceding Federal Census, an annual independent audit shall be made of all books, records, and accounts of the district, county, and precinct officers, agents or employees, including regular auditors of the counties and all governmental units of the county hospitals, farms, and other institutions of the county, and all matters pertaining to the fiscal affairs of the county.

Sec. 2. In all counties in which this Act applies, the first independent audit shall be made in 1960 and completed prior to December 31, 1960, and thereafter an annual independent audit shall be made of all office books and records enumerated in Section 1 of this Act.

Sec. 3. The Commissioners Court in all counties affected by this Act shall employ a disinterested, competent, experienced public accountant or certified public accountant to audit all of the above records and accounts enumerated in Section 1 of this Act.

Sec. 4. At the regular meeting of the Commissioners Court in January, 1960, and at the regular meeting of the Commissioners Court in January each year thereafter, the Court shall enter into a contract with a disinterested, competent, experienced public accountant or certified public accountant to audit all the books and records of the county that are enumerated in Section 1 of this Act. It shall not be necessary that the Commissioners Court advertise for competitive bids before selecting the public accountant or certified public accountant to prepare the audit or audits required by the provisions of this Act, and the consideration specified in each contract shall be paid out of the general fund of the respective county.

Sec. 5. The audits provided for in this Act shall be in addition to any special audits that may be prepared pursuant to the provisions of Articles 1638, 1641 and 1641c, or any regular or special audit report that may be prepared by the regular county auditor. Acts 1959, 56th Leg., p. 249, ch. 144.

Effective 90 days after May 12, 1959, date of adjournment.

Section 6 of the Act of 1959 repealed all conflicting laws and parts of laws to the extent of such conflict.

## 2. COUNTY AUDITOR

Art. 1651. 1467-73 General duties; destruction of ancient records

The Auditor shall have a general oversight of all the books and records of all the officers of the county, district or state, who may be authorized or required by law to receive or collect any money, funds;

fees, or other property for the use of, or belonging to, the county; and he shall see to the strict enforcement of the law governing county finances.

Upon the expiration of ten (10) years from their original date, the County Auditor with the consent of the Commissioners Court, may destroy the papers, cancelled checks and vouchers, accounts and records which are in the control and custody of his office. Bound volumes and ledgers shall not be destroyed in any event.

The necessary consent of the Commissioners Court shall be obtained by filing an application in writing and sworn to by the County Auditor, with the Commissioners Court setting out the classification of the papers, cancelled checks and vouchers, accounts, and records, and the years included, and that said papers, cancelled checks and vouchers, accounts, and records have been on file for not less than ten (10) years.

The Commissioners Court shall approve the application filed by the County Auditor by order and said order shall be spread upon the minutes of the Commissioners Court. As amended Acts 1959, 56th Leg., p. 539, ch. 241, § 1.

Emergency. Effective May 26, 1959.

Section 2 of the amendatory Act of 1959 contained a severability clause.

**Art. 1659a. Counties of 800,000; bids for supplies or materials; advertisement; filing**

In all counties having a population of eight hundred thousand (800,000) or more, according to the last preceding or any future Federal Census, supplies of every kind, road and bridge material, or any other material, for the use of said county, or any of its officers, departments, or institutions must be purchased on competitive bids, the contract to be awarded to the party who, in the judgment of the Commissioners Court, has submitted the lowest and best bid. Where the total expenditure for any such purchase or any such contract shall exceed One Thousand Dollars (\$1,000), advertisements for bids for such supplies and material, according to specifications giving in detail what is needed, shall be made by the county auditor once each week for two (2) successive weeks in a daily newspaper published and circulated in the county. Such advertisements shall state where the specifications are to be found, and shall give the time and place for receiving such bids. Where the amount to be expended shall be One Thousand Dollars (\$1,000), or less, it shall not be necessary to advertise for bids, but sealed bids shall be asked from as many as three (3) persons, firms or corporations, or as many more as shall offer to bid, based on written specifications filed with the county auditor at least forty-eight (48) hours before the time of opening said sealed bids. All such competitive bids shall be kept on file by the county auditor as a part of the records of his office, and shall be subject to inspection by anyone desiring to see them. Copies of all bids received shall be furnished by the county auditor to the Commissioners Court; and when the bids received are not satisfactory to the Commissioners Court, the auditor shall reject said bids and readvertise for new bids, where the amount to be expended exceeds One Thousand Dollars (\$1,000), or ask for new bids, where the amount to be expended shall be One Thousand Dollars (\$1,000), or less. In cases of emergency, purchases or contracts not in excess of Five Hundred Dollars (\$500), may be made upon requisition to be approved by the Commissioners Court.

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

without advertising for competitive bids or asking for competitive bids. Added Acts 1959, 56th Leg., p. 187, ch. 105, § 1.

Emergency. Effective April 28, 1959.

Section 2 of the Act of 1959 repealed all conflicting laws and parts of laws and contained a severability clause.

## TITLE 35—COUNTY LIBRARIES

### 1. COUNTY FREE LIBRARY

#### Art. 1679. Tax for maintenance

The Commissioners Courts are hereby authorized to set aside annually from the General Tax Fund, or the Permanent Improvement Fund of the county, as the said Court may determine, sums for the maintaining of free county libraries and for the erection of permanent improvements and the securing of land for free county libraries, but not to exceed twelve cents (12¢) on the One Hundred Dollar (\$100) valuation of all property in such county outside of all incorporated cities and towns already supporting a free public library, and upon all property within all incorporated cities and towns already supporting a free library, and upon all property within all incorporated cities and towns already supporting a free public library which have elected to become a part of such free library systems provided in Title 35 of the Revised Civil Statutes, for the purpose of maintaining county free libraries and for purchasing property therefor. As amended Acts 1947, 50th Leg., p. 765, ch. 378, § 1; Acts 1959, 56th Leg., p. 282, ch. 158, § 1.

Emergency. Effective May 8, 1959.

Tex.St.Supp. '60—11

TITLE 41—COURTS—COUNTY

CHAPTER ONE—THE COUNTY JUDGE

Art.  
1934a—16. Employment and compensation of stenographer of county judge in counties of 100,000 to 110,000 population [New].

Art. 1934a—16. Employment and compensation of stenographer of county judge in counties of 100,000 to 110,000 population

In any county in this State having a population of not less than One Hundred Thousand (100,000) nor more than One Hundred Ten Thousand (110,000) according to the last preceding Federal Census, the County Judge may, with the approval of the Commissioners Court, employ a secretary or stenographer at a salary not to exceed Forty-Eight Hundred Dollars (\$4,800) per year, such salary to be fixed by the Commissioners Court, and paid monthly out of the General Fund or Officers Salary Fund of the County. Acts 1959, 56th Leg., p. 1022, ch. 473, § 1.

Emergency. Effective May 30, 1959.

Section 2 of the Acts of 1959, provided: "This Act shall be cumulative of all laws relating to the employment and compensation of the secretary or stenographer of a County Judge."

CHAPTER FIVE—MISCELLANEOUS PROVISIONS

ACTS CREATING COUNTY COURTS AT LAW AND SIMILAR COURTS, AND AFFECTING PARTICULAR COUNTY COURTS, AND DECISIONS THEREUNDER

ELLIS COUNTY COURT

Art.  
1970—338A. Original and appellate jurisdiction in misdemeanor cases [New].

ECTOR COUNTY

Art.  
1970—346. County Court at Law for Ector County [New].

NOLAN COUNTY

1970—347. County Court at Law of Nolan County [New].

ACTS CREATING COUNTY COURTS AT LAW AND SIMILAR COURTS, AND AFFECTING PARTICULAR COUNTY COURTS, AND DECISIONS THEREUNDER

Art. 1970—13. Fees and salary of judge

*Repeal of salary and compensation laws applicable to judge of County Court of Dallas County at Law No. 1, see note under art. 3883i, § 8.*

Art. 1970—14. Salary of county judge of Dallas county

*Repeal of salary and compensation laws applicable to county judge of Dallas county, see note under art. 3883i, § 8.*

## DALLAS COUNTY AT LAW NO. 2

## Art. 1970—21. Judge; qualifications; salary

*Repeal of salary and compensation laws applicable to judge of County Court of Dallas County at Law No. 2, see note under art. 3883i, § 8.*

## Art. 1970—31. Salaries of judges of county courts at law

*Repeal of salary and compensation laws applicable to judge of County Court of Dallas County at Law No. 1, and County Court of Dallas County at Law No. 2, see note under art. 3883i, § 8.*

## DALLAS COUNTY PROBATE COURT

## Art. 1970—31a. Probate Court of Dallas County

*Repeal of salary and compensation laws applicable to probate judge of Dallas County, see note under art. 3883i, § 8.*

## CAMERON COUNTY COURT AT LAW

## Art. 1970—305. County court at law Cameron county created

Sec. 7. The County Court at Law of Cameron County, Texas, shall hold six (6) terms of Court each year, commencing on the first Monday in January, March, May, July, September, and November of each year and each term shall continue until the business of said Court shall have been disposed of; provided, however, that no term of said Court shall continue beyond the date fixed for the commencement of its new term, except upon an order entered on its minutes during the term extending the term for any particular causes therein specified. As amended Acts 1955, 54th Leg., p. 223, ch. 57, § 1; Acts 1959, 56th Leg., p. 283, ch. 159, § 1.

Emergency. Effective May 8, 1959.

## PARTICULAR COUNTY COURTS

## Art. 1970—310. Other acts creating or affecting jurisdiction of particular county courts

Brazos—Jurisdiction restored: Acts 1959, 56th Leg., p. 4, ch. 2, eff. Feb. 19, 1959.

San Augustine—Jurisdiction diminished: Acts 1959, 56th Leg., 2nd C.S. p. 90, ch. 7.

Sabine—Jurisdiction diminished: Acts 1959, 56th Leg., 2nd C.S., p. 90, ch. 7.

## ELLIS COUNTY COURT

## Art. 1970—338A. Original and appellate jurisdiction in misdemeanor cases

Section 1. The County Court of Ellis County, Texas, and the County Judge thereof shall have and exercise original and appellate jurisdiction in all misdemeanor cases over which the laws of this state has conferred jurisdiction in the County Court. All misdemeanor cases now pending in the District Court of Ellis County, Texas, and all writs and processes relating to such criminal cases issued by or out of said District Court of



Ellis County are hereby made returnable to the next term of the County Court of Ellis County after this Act takes effect; provided further, however, that as to any misdemeanor case on appeal from said District Court should a judgment be entered by the Court of Criminal Appeals remanding the case for a new trial or for further proceedings, same shall be remanded to the County Court of Ellis County and all jurisdiction in and to said particular case shall thereafter rest in the County Court of Ellis County, Texas.

Sec. 2. The District Clerk of Ellis County be and he is hereby required, within thirty days after this Act takes effect, to file with the County Clerk of said county all original papers in misdemeanor cases here transferred to said County Court, together with all Judge's dockets and certified copies of any interlocutory judgment or other order entered in the minutes of the District Court in said misdemeanor cases so transferred, and the County Clerk shall immediately docket all such cases on the docket of said County Court of Ellis County, Texas, and all such misdemeanor cases shall stand on the docket of said County Court in the manner and place as each stands on the docket of the District Court. Providing further, that it shall not be necessary that the County Clerk re-file any papers theretofore filed by the District Clerk; but papers in said case bearing the file mark of the District Clerk prior to the time of the said transfer shall be held to have been filed in the case as of the date filed without being re-filed by the County Clerk. Said District Clerk in misdemeanor cases so transferred shall accompany the papers with a certified bill of costs.

Sec. 3. All unfinished business and all final judgments heretofore rendered by the District Court of Ellis County pertaining to misdemeanor cases shall likewise be transferred to said County Court and the County Clerk of said county shall issue all writs of process thereunder, and his act in doing so shall be valid and binding to all intents and purposes the same as if no change had been made in said criminal jurisdiction. Acts 1959, 56th Leg., p. 50, ch. 26.

Emergency. Effective March 17, 1959.

Section 4 of the Act of 1959 repealed all conflicting laws and parts of laws.

Title of Act:

An Act transferring criminal jurisdiction in misdemeanor cases from Ellis County District Court to County Court of Ellis

County, Texas; providing for the transfer as to pending cases and the enforcement of judgments heretofore rendered; and declaring an emergency. Acts 1959, 56th Leg., p. 50, ch. 26.

## NUECES COUNTY

### Art. 1970—339. County Court at Law No. I of Nueces County

Effect of Acts 1959, 56th Leg., p. 56, ch. 31, creating court of domestic relations of Nueces county, on County Court at Law

No. 1 of Nueces county, see art. 2338—10, § 18.

### Art. 1970—339A. County Court at Law No. II of Nueces County

Effect of Acts 1959, 56th Leg., p. 56, ch. 31, creating court of domestic relations of Nueces county, on County Court at Law

No. 2 of Nueces county, see art. 2338—10, § 18.

## HUNT COUNTY

### Art.1970—344. County Court at Law of Hunt County

The County Court at Law of Hunt County, created by this Article, ceased to exist,

as provided by section 1, on December 31, 1959.

## TARRANT COUNTY

## Art. 1970—345. Tarrant County Probate Court

Sec. 3. On the first day of the initial term of said Probate Court of Tarrant County there shall be transferred to the docket of said court, under the direction of the county judge and by order entered on the minutes of the County Court of Tarrant County, such number of such proceedings and matters then pending in the County Court of Tarrant County as shall be, as near as may be, one-half in number of the total of all of the same then pending, and all writs and processes theretofore issued by or out of said County Court of Tarrant County in such matters or proceedings shall be returnable to the Probate Court of Tarrant County as though originally issued therefrom. All such new matters and proceedings filed on said day, or thereafter filed with the County Clerk of Tarrant County, irrespective of the court or judge to which the matter or proceeding is addressed, shall be filed by said clerk alternately in said respective courts in the order in which the same are deposited with him for filing, beginning first with the County Court of Tarrant County. No proceeding had in either of said courts, nor any order entered therein, shall be invalid because of any failure of said clerk to file new matters and proceedings alternately as above provided. The judge of either of said courts, in his discretion, may, by an order entered upon the minutes, on or after the first day of the initial term of said Probate Court of Tarrant County, transfer from either of said courts to the other, any such matter or proceeding then or thereafter pending therein, and all processes extant at the time of such transfer shall be returned to and filed in the court to which such transfer is made and shall be as valid and binding as though originally issued out of the court to which such transfer may be made. No application, pleading, motion, order, judgment, oath, bond, citation, return of citation, or any other matter or proceeding shall be invalid because of any reference therein to either of said courts by the name of the other, and any reference therein to either of said courts by the name of the other of said courts shall be legally sufficient for every purpose. As amended Acts 1959, 56th Leg., p. 739, ch. 334, § 1.

Emergency. Effective May 30, 1959.

Sec. 11. In case of the absence, disqualification or incapacity of either the Judge of the Probate Court of Tarrant County, or the County Judge of Tarrant County, or in the discretion of either of them for any other reason, the County Judge of Tarrant County may sit and act as Judge of the Probate Court of Tarrant County, and the Judge of the Probate Court of Tarrant County may sit and act as Judge of the County Court of Tarrant County, with respect to any matters referred to in Section 2 of this Act, and either of said judges may hear and determine, either in his own courtroom or, with the consent of the judge thereof, in the courtroom of the other of said courts, any matter or proceeding pending in either of said courts, and may enter any orders in such matters or proceedings as the judge of said other court might enter if personally presiding therein. As amended Acts 1959, 56th Leg., p. 739, ch. 334, § 2.

Emergency. Effective May 30, 1959.

Sec. 15a. No action taken, nor any order made or entered, nor any application, pleading, motion, bond, citation, return of citation filed, nor any other proceeding had in the County Court of Tarrant County or in the Probate Court of Tarrant County, heretofore or hereafter, shall ever be held invalid because done in either of said courts when it should have been done in the other of said courts, or because of erroneous reference

therein to either of said courts by the name of the other of said courts, and as against any complaint or charge of such nature, all of the same heretofore done are hereby validated for every purpose. Added Acts 1959, 56th Leg., p. 739, ch. 334, § 3.

Emergency. Effective May 30, 1959.

## ECTOR COUNTY

### Art. 1970—346. County Court at Law for Ector County

Section 1. There is hereby created a court to be held in Odessa, Ector County, Texas, which shall be known as the County Court at Law of Ector County, and which shall be a court of record.

Sec. 2. The County Court at Law of Ector County shall have original and concurrent jurisdiction with the County Court of Ector County in all matters and causes, civil and criminal, original and appellate, over which by the General Laws of this state, county courts have jurisdiction, except as provided in Section 5 of this Act; but this provision shall not affect jurisdiction of the Commissioners Court or the county judge of Ector County, as the presiding officer of the Commissioners Court as to roads, bridges and public highways, and matters of eminent domain which are now within the jurisdiction of the Commissioners Court or the presiding judge thereof.

Sec. 3. The jurisdiction of the County Court at Law of Ector County and of the judge thereof shall extend to all matters of eminent domain of which jurisdiction has heretofore been vested in the County Court of Ector County or in the county judge; but this provision shall not affect the jurisdiction of the Commissioners Court or of the county judge of Ector County as the presiding officer of said Commissioners Court as to roads, bridges, and public highways and matters of eminent domain which are now within the jurisdiction of the Commissioners Court or the presiding judge thereof.

Sec. 4. The County Court at Law of Ector County shall also have the general jurisdiction of a probate court within the limits of Ector County, concurrent with jurisdiction of the County Court of Ector County in such matters and proceedings. Such County Court at Law of Ector County shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis and common drunkards, grant letters testamentary and of administration, settle accounts of executors, transact all business appertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis and common drunkards, including the settlement, partition and distribution of estates of deceased persons, the apprenticing of minors as provided by law, and conduct lunacy proceedings.

The County Court at Law of Ector County shall have the jurisdiction conferred upon probate courts specially created by the Legislature in Article 1970a-1, Revised Civil Statutes of Texas, as the same now stands or may hereafter be amended, and all other provisions of the law relating to probate courts, whether specially created by the Legislature or otherwise, shall be and are hereby made to apply in all their provisions insofar as they are applicable to the County Court at Law of Ector County and insofar as they are not inconsistent with this Act.

Sec. 5. The County Judge of Ector County shall be the judge of the county court of Ector County. All ex-officio duties of the county judge shall be exercised by the judge of the County Court of Ector County except insofar as the same shall, by this Act, be committed to the judge of the County Court at Law of Ector County.

Sec. 6. The respective judges of the County Court of Ector County and of the County Court at Law of Ector County shall, from time to time as occasion may require, transfer cases from one of such courts to the other of such courts in order that the business may be equally distributed among them, that the judges thereof may at all times be provided with cases to be tried or otherwise considered, and that the trial of no case need be delayed because of the disqualification of the judge in whose court it is pending; provided, however, that no case shall be transferred from one court to the other without the consent of the judge of the court to which it is transferred; and provided further, that no case may be transferred from the County Court of Ector County which does not come within the jurisdiction of the County Court at Law of Ector County as prescribed in this Act.

Sec. 7. In probate matters, in the absence, disqualification or incapacity of the judge of the County Court at Law of Ector County the County Judge of Ector County may sit and act as judge of the County Court at Law, and may hear and determine, either in his own courtroom or in the courtroom of the County Court at Law any matter or proceedings there pending, and enter any orders in such matters or proceedings as the judge of the County Court at Law may enter if personally presiding therein. Likewise, in probate matters, the judge of the County Court at Law may, in the absence, disqualification or incapacity of the county judge sit and act as judge of the county court, and may hear and determine, either in his own courtroom or in the courtroom of the county court, any matter or proceeding there pending and enter any orders in such matters or proceedings as the county judge may enter if personally presiding therein. The signature of either judge on any order shall be conclusive that all conditions have been met or complied with to qualify him to act for the other in such probate matters.

Sec. 8. The judge of the County Court at Law of Ector County and the judge of the County Court of Ector County may, at any time, exchange benches, and may, at any time, sit and act for and with each other in any civil or criminal case, matter or proceeding of which the said courts have concurrent jurisdiction, pending now, or hereafter, in either the County Court at Law of Ector County or the County Court of Ector County; and any and all such acts thus performed by the judge of the County Court of Ector County or the judge of the County Court at Law of Ector County shall be valid and binding upon all parties to such cases, matters and proceedings.

Sec. 9. The terms of the County Court at Law of Ector County shall be as prescribed by the laws relating to the county courts. The terms of the County Court at Law of Ector County shall be held as now established for the terms of the County Court of Ector County and the same may be changed in accordance with the laws governing the change in the terms of the County Court of Ector County.

Sec. 10. At the next general election after the effective date of this Act there shall be elected a judge of the County Court at Law of Ector County who shall have been a duly licensed and practicing member of the State Bar of Texas for not less than five (5) years, well informed in the laws of the state, who shall have resided in and been actively engaged in the practice of law in Ector County, Texas, for a period of not less than two (2) years prior to such general election, and who shall hold his office for four (4) years and until his successor shall have been duly elected and qualified. When this Act becomes effective, the Commissioners Court of Ector County, Texas, shall appoint a judge of said Court at Law of Ector County, who shall have the qualifications herein prescribed

and who shall serve until the next general election and until his successor shall have been duly elected and qualified. Any vacancy thereafter occurring in the office of the judge of said County Court at Law of Ector County shall in like manner, as hereinabove provided, be filled by said Commissioners Court of Ector County, the appointee thereof to hold office until the next succeeding general election and until his successor shall be duly elected and qualified.

Sec. 11. The county attorney of Ector County shall represent the state in all prosecutions in the County Court at Law of Ector County, as provided by law for such prosecutions in county courts, and shall be entitled to the same fees as now prescribed by law for such prosecutions in the county courts.

Sec. 12. The judge of the County Court at Law of Ector County may be removed from office in the same manner and for the same causes as any county judge may be removed under the laws of this state.

Sec. 13. The judge of the County Court at Law of Ector County shall execute a bond and take the oath of office as required by law relating to county judges.

Sec. 14. A special judge of the County Court at Law of Ector County may be appointed or elected as provided by law relating to county courts and to the judge thereof. He shall receive the sum of Thirty Dollars (\$30.00) per day for each day he so actually serves, to be paid out of the general fund of the county by the Commissioners Court.

Sec. 15. In the case of the disqualification of the judge of the County Court at Law of Ector County to try any case pending in his court, the parties or their attorneys may agree on the selection of a special judge of the County Court at Law to try such case or cases where the judge of the County Court at Law of Ector County is disqualified. In case of the selection of such special judge by agreement of the parties or their attorneys, such special judge shall draw the same compensation as that provided in Section 14 of this Act.

Sec. 16. The County Court at Law of Ector County, or the judge thereof, shall have the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary to the enforcement of jurisdiction of the court, and to issue writs of habeas corpus in such cases where the offense charged is within the jurisdiction of said court or of any other court in said county of inferior jurisdiction to the County Court at Law, and also the power to punish for contempt under such provisions as are or may be provided by the general laws governing county courts throughout the state, and said judge shall have all other powers, duties, immunities and privileges as are or may be provided by general law for judges of courts of record and for judges of County Courts at Law, and he shall be a magistrate and a conservator of the peace.

Sec. 17. The county clerk of Ector County shall be the clerk of the County Court at Law of Ector County, and the seal of the court shall be the same as that provided by law for county courts, except the seal shall contain the words "County Court at Law of Ector County."

Sec. 18. The sheriff of Ector County shall in person or by deputy attend the County Court at Law of Ector County when required by the judge thereof.

Sec. 19. The jurisdiction and authority now vested by law in the county clerk of Ector County and the judge thereof, for the drawing, selection and service of jurors and talesmen shall also be exercised by the County Court at Law and the judge thereof; but jurors and talesmen

summoned for either of said courts may by order of the judge of the court in which they are summoned, be transferred to the other court for service therein and may be used therein as if summoned for the court to which they may be thus transferred. Upon concurrence of the judge of the County Court at Law and the county judge, jurors may be summoned for service in both courts and shall be used interchangeably in both such courts.

Sec. 20. Jurors regularly impaneled for the week by the district court or courts, if there be more than one, may on request of either the judge of the county court or the judge of the County Court at Law, be made available by the district judge or judges in such numbers as may be requested, for service for the week in either or both the county court or the County Court at Law and such jurors shall serve in the county court and County Court at Law the same as if they had been drawn and selected as is otherwise provided by law.

Sec. 21. The judge of the County Court at Law of Ector County shall appoint an official shorthand reporter for such court who shall be well skilled in his profession and shall be a sworn officer of the court and shall hold his office at the pleasure of the court. Such reporter shall take the oath required of official court reporters and shall receive a salary as set by the Commissioners Court of Ector County to be paid out of the county treasury of Ector County, as other county officials are paid, in equal monthly installments. All other provisions of Chapter 13, Title 42, Revised Civil Statutes of Texas, 1925, as amended and as the same may hereafter be amended, and all other provisions of the law relating to official court reporters shall be and are hereby made to apply in all their provisions insofar as they are applicable to the official shorthand reporter herein authorized to be appointed and insofar as they are not inconsistent with this Act.

Sec. 22. The judge of the County Court at Law of Ector County shall receive the same salary and be paid from the same fund and in the same manner as is now prescribed or may be established by law for the county judge of Ector County, to be paid out of the county treasury of Ector County, Texas, on the order of the Commissioners Court of said county, and said salary shall be paid monthly in equal installments.

Sec. 23. The judge of the County Court at Law of Ector County shall assess the same fees as are prescribed by law relating to the county judge's fees, all of which will be collected by the clerk of the court and shall be paid into the county treasury on collection, no part of which shall be paid to the judge, but he shall draw the salary as above specified in this Act.

Sec. 24. The laws of the State of Texas, the rules of procedure and the rules of evidence shall be applicable to and control trials and proceedings in the County Court at Law of Ector County, and shall be applicable to and govern the proceedings in and appeals to and appeals from the County Court at Law of Ector County. Acts 1959, 56th Leg., p. 6, ch. 4.

Emergency. Effective Feb. 23, 1959.

Section 25 of the Act of 1959 repeals all conflicting laws and parts of laws to the extent of such conflict only. As to all other laws and parts of laws this Act shall be cumulative and section contained a severability provision.

Juvenile court for Ector county, see art. 2338—12.

**Title of Act:**

An Act creating a County Court at Law for Ector County, Texas, and making other provisions relative thereto; repealing all laws or parts of laws in conflict herewith; providing for severability; and declaring an emergency. Acts 1959, 56th Leg., p. 6, ch. 4.

## NOLAN COUNTY

## Art. 1970—347. County Court at Law of Nolan County

Section 1. There is hereby created a Court to be held in Sweetwater, Nolan County, Texas, which shall be known as the County Court at Law of Nolan County; providing, however, that the provisions of this Act shall not become operative until the Commissioners Court of Nolan County enters an order adopting same.

Sec. 2. (a) The County Court at Law of Nolan County shall have original and concurrent jurisdiction with the County Court of Nolan County, in all matters and causes, civil and criminal, original and appellate, over which by the General Laws of this State, County Courts have jurisdiction, except as provided in Section 6 of this Act; but this provision shall not affect jurisdiction of the Commissioners Court or the County Judge of Nolan County, Texas, as the presiding officer of the Commissioners Court as to roads, bridges and public highways, and matters of eminent domain, which are now within the jurisdiction of the Commissioners Court or the Judge of Nolan County.

(b) With the consent of the other, the Judge of either of such Courts shall have the power to transfer to the other Court any case over which the Courts have concurrent jurisdiction pending upon the docket of his Court except in cases where the writ of certiorari has been granted.

Sec. 3. The County Court at Law of Nolan County shall have and exercise original concurrent jurisdiction with the Justice Courts in all civil matters which by the General Laws of this State is conferred upon Justice Courts. Neither the County Court at Law of Nolan County nor the Judge thereof shall have jurisdiction to act as a Coroner nor to preside at inquests, nor have jurisdiction of claims which come within the jurisdiction of the Small Claims Court as prescribed by Article 2460a of the Revised Civil Statutes of Texas.

Sec. 4. No appeal or writ of error shall be taken to the Court of Civil Appeals from any final judgment of the County Court at Law of Nolan County in civil cases of which said court had appellate or original concurrent jurisdiction with the Justice Court where the judgment or amount in controversy would not exceed One Hundred Dollars (\$100), exclusive of interest and costs.

Sec. 5. This Act shall not be construed to deprive the Justice Courts of jurisdiction now conferred upon them by law, but only to give concurrent original jurisdiction to the County Court at Law of Nolan County over such matters as are specified in this Act; nor shall this Act be construed to deny the right of an appeal to the County Court of Law of Nolan County from the Justice Court, where the right of appeal to the County Court now exists by law.

Sec. 6. The County Court of Nolan County shall retain, as heretofore, the general jurisdiction of a Probate Court; it shall probate wills; appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards; grant letters testamentary and of administration; settle accounts of executors, administrators and guardians; transact all business appertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlement, partition and distribution of estates of deceased persons; and to apprentice minors as provided by law; and the said Court, or the Judge thereof, shall have the power to issue writs of in-

junction, mandamus, and all writs necessary to the enforcement of the jurisdiction of said Court; and also to punish contempts under such provisions as are or may be provided by General Law governing County Courts throughout the State. The County Judge of Nolan County shall be the Judge of the County Court of Nolan County. All ex-officio duties of the County Judge shall be exercised by the Judge of the County Court of Nolan County except in so far as the same shall, by this Act, be committed to the Judge of the County Court at Law of Nolan County.

Sec. 7. The terms of the County Court at Law of Nolan County shall be as prescribed by the laws relating to the County Courts. The terms of the County Court at Law of Nolan County shall be held as now established for the terms of the County Court of Nolan County and the same may be changed in accordance with the laws governing the change in the terms of the County Court of Nolan County.

Sec. 8. There shall be elected in Nolan County by the qualified voters thereof, at each General Election, a Judge of the County Court at Law of Nolan County. No person shall be elected or appointed Judge of the Court who is not a resident citizen of Nolan County. He shall also be a licensed Attorney of the State of Texas and shall have been a licensed Attorney of the State of Texas for at least two (2) years immediately prior to his appointment or election. The person elected such Judge shall hold his office for four (4) years and until his successor shall have been duly elected and qualified.

Sec. 9. The County Attorney of Nolan County shall represent the State in all prosecutions in the County Court at Law of Nolan County, as provided by law for such prosecutions in County Courts, and shall be entitled to the same fees as now prescribed by law for such prosecutions in the County Courts.

Sec. 10. As soon as this Act becomes effective the Commissioners Court of Nolan County shall appoint a Judge of the County Court at Law of Nolan County, who shall hold his office until the next General Election and until his successor shall have been duly elected and qualified, and shall provide suitable quarters for the holding of said court.

Sec. 11. The Judge of the County Court at Law of Nolan County may be removed from office in the same manner and for the same causes as any County Judge may be removed under the laws of this State.

Sec. 12. The Judge of the County Court at Law of Nolan County shall execute a bond and take the oath of office as required by law relating to County Judges.

Sec. 13. A special Judge of the County Court at Law of Nolan County may be appointed or elected as provided by law relating to County Courts and to the Judge thereof. He shall receive the sum of Thirty Dollars (\$30) per day for each day he so actually serves, to be paid out of the general fund of the county by the Commissioners Court.

Sec. 14. In the case of the disqualification of the Judge of the County Court at Law of Nolan County to try any case pending in his Court, the parties or their attorneys may agree on the selection of a Special Judge to try such case or cases where the Judge of the County Court at Law of Nolan County is disqualified. In case of the selection of such Special Judge by agreement of the parties or their Attorneys, such Special Judge shall draw the same compensation as that provided in Section 13 of this Act.

Sec. 15. The County Court at Law of Nolan County, or the Judge thereof, shall have the power to issue writs of injunction, mandamus,



sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary to the enforcement of jurisdiction of the Court and to issue writs of habeas corpus in such cases where the offense charged is within the jurisdiction of said Court or of any other Court in said County of inferior jurisdiction to the County Court at Law.

Sec. 16. The County Clerk of Nolan County shall be the clerk of the County Court at Law of Nolan County, and the seal of the Court shall be the same as that provided by law for County Courts, except the seal shall contain the words "County Court at Law of Nolan County."

Sec. 17. The Sheriff of Nolan County shall in person or by deputy attend the County Court at Law of Nolan County when required by the Judge thereof.

Sec. 18. The jurisdiction and authority now vested by law in the County Court of Nolan County and the Judge thereof, for the drawing, selection and service of jurors and talesmen shall also be exercised by the County Court at Law of Nolan County and the Judge thereof; but jurors and talesmen summoned for either of said Courts may by order of the Judge of the Court in which they are summoned be transferred to the other Court for service therein and may be used therein as if summoned for the Court to which they may be thus transferred. Upon concurrence of the Judge of the County Court at Law of Nolan County and the Judge of the County Court of Nolan County, jurors may be summoned for service in both Courts and shall be used interchangeably in both such Courts. All summons for petit jurors for all civil and criminal cases under existing laws at the time this Act takes effect, shall be as valid as if no change had been made and the persons constituting such jury panels shall be required to appear and serve at the ensuing term of said Courts as fixed by this Act, and their acts as jurors shall be as valid as if they had been selected as jurors in the Court for which they were originally drawn.

Sec. 19. Any vacancy in the office of the Judge of the County Court at Law of Nolan County shall be filled by the Commissioners Court, and when so filled, the Judge shall hold office until the next General Election and until his successor is elected and qualified.

Sec. 20. The Judge of the County Court at Law of Nolan County shall receive the same salary and be paid from the same fund and in the same manner as is now prescribed or may be established by law for the County Judge of Nolan County, to be paid out by the County Treasurer of Nolan County, Texas, on the order of the Commissioners Court of said County, and said salary shall be paid monthly in equal installments.

Sec. 21. The Judge of the County Court at Law of Nolan County shall assess the same fees as are prescribed by law relating to the County Judge's fees all of which shall be collected by the Clerk of the Court and shall be paid into the County Treasury on collection, no part of which shall be paid to the Judge, but he shall draw the salary as above specified in this Act.

Sec. 22. The Judge of the County Court at Law of Nolan County may appoint an official shorthand reporter for such Court who shall be well-skilled in his profession and shall be a sworn officer of the Court and shall hold his office at the pleasure of the Court. Such reporter shall take the oath required of official court reporters and shall receive a salary as set by the Commissioners Court of Nolan County to be paid out of the County Treasury of Nolan County, as other county officials are paid, in equal monthly installments. All other provisions of Chapter

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

13, Title 42, Revised Civil Statutes of Texas, 1925, as amended, and as the same may hereafter be amended, and all other provisions of the law relating to official court reporters shall be and are hereby made to apply in all its provisions in so far as they are applicable to the official shorthand reporter herein authorized to be appointed and in so far as they are not inconsistent with this Act.

Sec. 23. The laws of the State of Texas, the rules of procedure and the rules of evidence shall be applicable to and control trials and proceedings in the County Court at Law of Nolan County, and shall be applicable to and govern the proceedings in and appeals to and appeals from the County Court at Law of Nolan County. Acts 1959, 56th Leg., p. 179, ch. 100.

Emergency. Effective April 28, 1959.

Section 24 of the amendatory Act of 1959 repealed all conflicting laws and parts of laws to the extent of such conflict only. Section 25 contained a severability clause.

**Title of Act:**

An Act creating the County Court at Law of Nolan County, Texas and making other provisions relative thereto; repealing all laws in conflict; providing for severability; and declaring an emergency. Acts 1959, 56th Leg., p. 179, ch. 100.

## TITLE 42—COURTS—PRACTICE IN DISTRICT AND COUNTY

## CHAPTER THREE—CITATION

Art.

2031b. Service of process upon foreign corporation and non-residents [New].

Art. 2031a. Power of attorney designating resident for service of process; penalty for failure to file

Applicability to non-profit corporations, see V.A.T.S. Non-Profit Corp. Act art. 8.09.

Art. 2031b. Service of process upon foreign corporations and non-residents

**Failure to appoint agent; designation of Secretary of State as lawful attorney**

Section 1. When any foreign corporation, association, joint stock company, partnership, or non-resident natural person required by any Statute of this State to designate or maintain a resident agent, or any such corporation, association, joint stock company, partnership, or non-resident natural person subject to Section 3 of this Act, has not appointed or maintained a designated agent, upon whom service of process can be made, or has one or more resident agents and two (2) unsuccessful attempts have been made on different business days to serve process upon each of its designated agents, such corporation, association, joint stock company, partnership, or non-resident natural person shall be conclusively presumed to have designated the Secretary of State of Texas as their true and lawful attorney upon whom service of process or complaint may be made.

**Engaging in business in state; service upon person in charge of business**

Sec. 2. When any foreign corporation, association, joint stock company, partnership, or non-resident natural person, though not required by any Statute of this State to designate or maintain an agent, shall engage in business in this State, in any action in which such corporation, joint stock company, association, partnership, or non-resident natural person is a party or is to be made a party arising out of such business, service may be made by serving a copy of the process with the person who, at the time of the service, is in charge of any business in which the defendant or defendants are engaged in this State, provided a copy of such process, together with notice of such service upon such person in charge of such business shall forthwith be sent to the defendant or to the defendants principal place of business by registered mail, return receipt requested.

**Act of engaging in business in state as equivalent to appointment of Secretary of State as agent**

Sec. 3. Any foreign corporation, association, joint stock company, partnership, or non-resident natural person that engages in business in

this State, irrespective of any Statute or law respecting designation or maintenance of resident agents, and does not maintain a place of regular business in this State or a designated agent upon whom service may be made upon causes of action arising out of such business done in this State, the act or acts of engaging in such business within this State shall be deemed equivalent to an appointment by such foreign corporation, joint stock company, association, partnership, or non-resident natural person of the Secretary of State of Texas as agent upon whom service of process may be made in any action, suit or proceedings arising out of such business done in this State, wherein such corporation, joint stock company, association, partnership, or non-resident natural person is a party or is to be made a party.

#### **Doing business in state; definition**

Sec. 4. For the purpose of this Act, and without including other acts that may constitute doing business, any foreign corporation, joint stock company, association, partnership, or non-resident natural person shall be deemed doing business in this State by entering into contract by mail or otherwise with a resident of Texas to be performed in whole or in part by either party in this State, or the committing of any tort in whole or in part in this State.

#### **Delivery of process to Secretary of State; forwarding copy**

Sec. 5. Whenever process against a foreign corporation, joint stock company, association, partnership, or non-resident natural person is made by delivering to the Secretary of State duplicate copies of such process, the Secretary of State shall require a statement of the name and address of the home or home office of the non-resident. Upon receipt of such process, the Secretary of State shall forthwith forward to the defendant a copy of the process by registered mail, return receipt requested.

#### **Non-residency after accrual of cause of action; service upon Secretary of State**

Sec. 6. When any corporation, association, joint stock company, partnership or natural person becomes a non-resident of Texas, as that term is commonly used, after a cause of action shall arise in this State, but prior to the time the cause of action is matured by suit in a court of competent jurisdiction in this State, when such corporation, association, joint stock company, partnership or natural person is not required to appoint a service agent in this State, such corporation, association, joint stock company, partnership or natural person may be served with citation by serving a copy of the process upon the Secretary of State of Texas, who shall be conclusively presumed to be the true and lawful attorney to receive service of process; provided that the Secretary of State shall forward a copy of such service to the person in charge of such business or an officer of such company, or to such natural person by certified or registered mail, return receipt requested.

#### **Cumulative effect of act**

Sec. 7. Nothing herein contained shall be construed as repealing any statute in force in this State in reference to service of process, but this Act shall be cumulative of all existing statutes. Acts 1959, 56th Leg., p. 85, ch. 43.

Effective 90 days after May 12, 1959, date of adjournment.

Section 8 of the Act of 1959 contained a severability clause.

Secretary of State as agent for service of process on corporations, see V.A.T.S. Bus.Corp. Act art. 2.11.

Service of process on foreign corporations, see V.A.T.S. Bus.Corp. Act, art. 8.10.

Withdrawal of foreign corporations, service on Secretary of State, see V.A.T.S. Bus. Corp. Act, art. 8.14.

**Title of Act:**

An Act providing for service of process on non-residents; providing that this Act shall not repeal but shall be cumulative of existing Statutes; providing for severability; and declaring an emergency. Acts 1959, 56th Leg., p. 85, ch. 43.

**Art. 2039a. Citation of nonresident motor vehicle operators by serving chairman of State Highway Commission; forwarding notice to defendant**

**Acceptance of benefits of highways deemed equivalent to appointment of agent; service**

Section 1. The acceptance by a nonresident of this State or by a person who was a resident of this State at the time of the accrual of a cause of action but who subsequently removes therefrom, or the acceptance by his agent, servant, employee, heir, legal representative, executor, administrator or guardian of the rights, privileges and benefits extended by law to such persons of operating a motor vehicle or motorcycle or of having the same driven or operated within the State of Texas shall be deemed equivalent to an appointment by such nonresident and of his agent, servant, employee, heir, legal representative, executor, administrator or guardian, of the Chairman of the State Highway Commission of this State, or his successor in office, to be his true and lawful attorney and agent upon whom may be served all lawful process in any civil action or proceeding now pending or hereafter instituted against said nonresident, his agent, servant, employee, heir, legal representative, executor, administrator or guardian, growing out of any accident, or collision in which said nonresident, his agent, servant, employee, heir, legal representative, executor, administrator or guardian, may be involved while operating a motor vehicle or motorcycle within this State, either in person or by his agent, servant, employee, heir, legal representative, executor, administrator or guardian, and said acceptance or operation shall be a signification of the agreement of said nonresident, or his agent, servant, employee, heir, legal representative, executor, administrator or guardian, that any such process against him or against his agent, servant, employee, heir, legal representative, executor, administrator or guardian, served upon said Chairman of the State Highway Commission or his successor in office, shall be of the same legal force and validity as if served personally.

Service of such process shall be made by leaving a certified copy of the process issued in the hands of the Chairman of the State Highway Commission in Texas at least twenty (20) days prior to the return date thereof, to be stated in said process, and such service shall be sufficient upon said nonresident, his agent, servant, employee, heir, legal representative, executor, administrator or guardian, provided, however, that notice of such service and a copy of the process be forthwith sent by registered mail by the Chairman of the State Highway Commission to the nonresident defendant, his agent, servant, employee, heir, legal representative, executor, administrator or guardian. As amended Acts 1953, Fifty-third Legislature, p. 72, ch. 53, § 1; Acts 1959, 56th Leg., p. 1103, ch. 502, § 1.

Emergency. Effective June 1, 1959.

**CHAPTER SEVEN—THE JURY****1. JURIES IN CERTAIN COUNTIES****Art. 2095. 5152—3 Cards put in wheel; typists and expenses**

Said officers shall write the names of all persons who are known to be qualified jurors under the law, residing in their respective counties, on separate cards of uniform size and color, writing also on said cards, whenever possible, the post-office address of each juror so selected, except that in counties having a population of one hundred and fifty thousand (150,000) or more, according to the last preceding Federal Census, the Commissioners Court shall provide out of the jury fund a sum sufficient for the payment of typists and other expenses. The typists, under the direction, control and supervision of the District Clerk, shall type the names and addresses of qualified jurors upon the cards as herein described. The expenses so incurred shall be authorized, reported, paid and accounted for under the same laws, rules and regulations as govern the payment of other expenses of the office of the District Clerk in such counties, except as otherwise herein specifically provided. The cards containing said names shall be deposited in a jury wheel, to be provided for such purpose by the Commissioners Court of the county. Said wheel shall be constructed of any durable material and shall be so constructed as to freely revolve on its axle; and may be equipped with a motor capable of revolving said wheel in such a manner as to thoroughly mix said cards; and shall be kept locked at all times, except when in use as hereinafter provided, by the use of two separate locks, so arranged that the key to one will not open the other lock; and said wheel, and the clasps thereto attached into which the locks shall be fitted, shall be so arranged that the wheel cannot be opened unless both of said locks are unlocked at the time the wheel is opened. The keys to such locks shall be kept, one by the sheriff and the other by the district clerk. The sheriff and the clerk shall not open such wheel, nor permit the same to be opened by any person, except at the time and in the manner and by the persons herein specified; but said sheriff and clerk shall keep such wheel, when not in use, in a safe and secure place, where the same cannot be tampered with. As amended Acts 1929, 41st Leg., p. 263, ch. 116, § 1; Acts 1949, 51st Leg., p. 720, ch. 383, § 1; Acts 1959, 56th Leg., p. 27, ch. 17, § 1.

Effective 90 days after May 12, 1959, date of adjournment.

**Art. 2096. 5154 Cards drawn from wheel**

Not less than ten (10) days prior to the first day of a term of court, the district clerk or one of his deputies, and the sheriff, or one of his deputies, in the presence and under the direction of the district judge, if the jurors are to be drawn for the district court, or the clerk of the county court, or one of his deputies, and the sheriff, or one of his deputies, in the presence and under the direction of the county judge, if the jurors are to be drawn for the county court, shall draw from the wheel containing the names of jurors, after the same has been well turned so that the cards therein are thoroughly mixed, one by one the names of thirty-six jurors, or a greater or less number where such judge has so directed, for each week of the term of the district or county courts for which a jury may be required, and shall record such names as they are drawn upon as many separate sheets of paper as there are weeks for such term for which jurors may be required. At such drawing, no person other than those above-

named shall be permitted to be present. The officers attending such drawing shall not divulge the name of any person that may be drawn as a juror to any person. If at any time during the term it appears that the lists already drawn for that term will be exhausted before the expiration of the term and that additional lists may be needed, lists for as many additional weeks as the judge may direct shall be drawn in the same manner. As amended Acts 1959, 56th Leg., p. 871, ch. 396, § 1.

Emergency. Effective May 30, 1959.

#### Art. 2097. [5155] List certified

The several lists of names so drawn shall be certified under the hand of the clerk or the deputy doing the drawing, and the district or county judge in whose presence the names were drawn from the wheel, to be the lists drawn by him for that term, and shall be sealed up in separate envelopes indorsed, "List No. — of the petit jurors drawn on the — day of —, 19—, for the — Court of — County," (filling in the blanks properly and numbering the envelopes consecutively from one up). The clerk doing the drawing shall write his name across the seals of the envelopes and deliver them to the judge, who shall inspect the envelopes to see that they are properly indorsed and shall then deliver them to the clerk or deputy, and the clerk shall then immediately file them away in some safe and secure place in his office. As amended Acts 1959, 56th Leg., p. 870, ch. 395, § 1.

Emergency. Effective May 30, 1959.

Section 2 of the amendatory Act of 1959 amended article 2099.

#### Art. 2099. [5157] Cards to be used again

When the names are drawn for jury service, the cards containing such names shall be sealed in separate envelopes, indorsed, 'Cards containing the names of jurors on List No. — of the petit jurors drawn on the — day of —, 19—, for the — Court of — County,' (filling in the blanks properly). Each envelope shall be retained securely by the clerk, unopened, until after the jury selected from the corresponding list has been impaneled; and after such jurors so impaneled have served four (4) or more days, the envelope containing the cards bearing the names of the jurors on that list shall then be opened by the clerk, or his deputy, and those cards bearing the names of persons who have not been impaneled and who have not served as many as four (4) days shall be immediately returned to the wheel by the clerk, or his deputy; and the cards bearing the names of the persons serving as many as four (4) days shall be put in a box provided for that purpose for the use of the officers who shall next select the jurors for the wheel. If any of the lists drawn for a term of court are not used, the clerk or his deputy shall open the envelopes containing the cards bearing the names on the unused lists immediately after the expiration of the term and return the cards to the wheel. As amended Acts 1959, 56th Leg., p. 870, ch. 395, § 2.

Emergency. Effective May 30, 1959.

**CHAPTER THIRTEEN—GENERAL PROVISIONS**

**3. OFFICIAL COURT REPORTER**

Art.	Art.
2326j—3. Appointment and compensation of reporters in 53rd, 98th and 126th judicial districts and Criminal District Court of Travis County [New].	2326j—6. Compensation of reporters in Jefferson county [New].
2326j—4. Compensation of reporter in 47th judicial district [New].	2326j—7. Appointment and compensation of reporter in 100th judicial district [New].
2326j—5. Compensation of reporter in 79th Judicial District [New].	2326m. Shorthand reporters in county courts at law in counties of 360,000 to 612,000 [New].
	2326n. Shorthand reporters in counties of 800,000 or more population [New].

**3. OFFICIAL COURT REPORTER**

**Art. 2326j—3.** Appointment and compensation of reporters in 53rd, 98th and 126th judicial districts and Criminal District Court of Travis County

The judges of the District Courts of the Fifty-third and One Hundred Twenty-sixth Judicial Districts of Texas and the judge of the Ninety-eighth District Court of Travis County and the judge of the Criminal District Court of Travis County, shall each appoint an official shorthand reporter for his respective judicial district or court in the manner now provided for district courts in this state who shall have the same qualifications and whose duties shall in every respect be the same as now provided by law. Said official shorthand reporter shall receive a salary of not less than Sixty-six Hundred Dollars (\$6600.00) per annum, nor more than Eight Thousand Dollars (\$8,000.00) per annum, said salary to be fixed and determined by the judges of the Fifty-third, Ninety-eighth and One Hundred Twenty-sixth District Courts of Travis County and the judge of the Criminal District Court of Travis County, and shall be in addition to transcript fees, fees for statements of fact and all other fees. Said salary when so fixed and determined by the district judges of said respective courts shall be paid monthly out of the general fund, or the jury fund, or out of any fund available for the purpose as may be determined by the County Commissioners Court. From and after passage of this Act all provisions relating to official shorthand reporters and their duties in district courts shall in all respects govern, except that the salary of the official shorthand reporters as provided for in this Act shall be fixed and determined by the district judges of the Fifty-third, Ninety-eighth and One Hundred Twenty-sixth District Courts of Travis County and the Criminal District Court of Travis County and not otherwise. Acts 1959, 56th Leg., p. 5, ch. 3, § 1.

Emergency. Effective Feb. 19, 1959.

Section 2 of the Act of 1959 repealed conflicting laws, and section 3 contained a severability clause.

**Art. 2326j—4.** Compensation of reporter in 47th judicial district

Section 1. From and after the passage of this Act the official shorthand reporter for the 47th Judicial District of Texas, composed of the counties of Potter, Randall, and Armstrong, shall receive a salary of not less than Five Thousand, Seven Hundred Fifty (\$5,750.00) Dollars per annum, nor more than Eight Thousand, Five Hundred (\$8,500.00) Dollars per annum, which shall be determined, fixed and set by the judge of said district; and from and after the time that said judge shall have entered



an order in the minutes of the court, in each county of said district, which order shall be a public record and open for inspection, stating specifically the amount of salary to be paid to said reporter, and shall have filed a copy of said order with each Commissioners Court of the district, the salary so determined, fixed and set shall be paid monthly, by and in the proportion for each county of the district as provided by law, out of the General Fund, or out of the Jury Fund, or out of any fund available for the purpose.

Sec. 2. From and after the passage of this Act, all provisions of the law relating to the appointment, qualifications and duties of official shorthand reporters in this state, and as to allowance to them of transcript fees and hotel and traveling expense, shall govern, save and except that when the salary of the official shorthand reporter for the 47th Judicial District shall have been determined, fixed and set by the judge of said district, in the manner and within the amount limits as in this Act provided, said salary shall be paid to said official shorthand reporter as in this Act provided, and not otherwise. Acts 1959, 56th Leg., p. 200, ch. 113.

Emergency. Effective April 29, 1959.

Title of Act:

An Act relating to and fixing minimum and maximum salary of the official shorthand reporter for the 47th Judicial District of Texas; with saving clause; and declaring an emergency. Acts 1959, 56th Leg., p. 200, ch. 113.

Art. 2326j—5. Compensation of reporter in 79th Judicial District

That the official shorthand reporter of the 79th Judicial District of Texas, shall receive a salary of Eight Thousand Dollars (\$8,000.00) per annum, in addition to the compensation for transcription fees as provided by law. Such salary shall be paid monthly upon approval of the judge of the 79th Judicial District Court, and shall be paid by the Commissioners Court of each of the counties comprising the 79th Judicial District of Texas. Such salary shall be payable out of the General Fund, Officers Salary Fund, the Jury Fund or any fund available for that purpose. Acts 1959, 56th Leg., p. 474, ch. 202, § 1.

Effective 90 days after May 12, 1959, date of adjournment.

Title of Act:

An Act providing for the compensation of the official shorthand reporter of the 79th Judicial District of Texas; providing the manner of payment; and declaring an emergency. Acts 1959, 56th Leg., p. 474, ch. 202.

Art. 2326j—6. Compensation of reporters in Jefferson county

The official shorthand reporters for the Judicial District Courts, Civil or Criminal, and the official shorthand reporter for the County Court at Law, of Jefferson County, shall each receive a salary of not more than Eight Thousand Dollars (\$8,000.00) per annum in addition to the transcript fees as provided by law; said salary shall be fixed and determined by the judges of such Judicial District Courts, Civil or Criminal, and the judge of the County Court at Law, subject to the approval of the Commissioners Court. The salary shall be paid monthly out of the General Fund, Jury Fund, or out of any fund available for the purpose as may be determined by the Commissioners Court of the county. Acts 1959, 56th Leg., p. 748, ch. 340, § 1.

Emergency. Effective May 30, 1959.

Section 2 of the Act of 1959 repealed all conflicting laws and parts of laws to the extent of such conflict, section 3 contained a severability clause.

Criminal judicial district of Jefferson county, see Vernon's Ann.C.C.P. art. 52—160b.

Jefferson county judicial district court, see art. 199(58, 136).

## Title of Act:

An Act to fix the maximum salary and provide other compensation for the official shorthand reporters of the Judicial District Courts, Civil or Criminal, and the official shorthand reporter of the County Court at Law, of Jefferson County; and declaring an emergency. Acts 1959, 56th Leg., p. 748, ch. 340.

### Art. 2326j—7. Appointment and compensation of reporter in 100th judicial district

Section 1. The Judge of the 100th Judicial District of Texas, composed of the counties of Carson, Childress, Collingsworth, Donley and Hall, or the Judge of the Judicial District of which the counties of Carson, Childress, Collingsworth, Donley and Hall are a part thereof, shall appoint an official shorthand reporter for such District in the manner now provided for District Court in this State, who shall have the same qualifications and whose duties shall in every respect be the same as now provided by law. Said official shorthand reporter shall receive a salary of not less than Four Thousand, Eight Hundred Dollars (\$4,800) per annum, nor more than Seven Thousand, Five Hundred Dollars (\$7,500) per annum, said salary to be fixed and determined by the District Judge of the 100th Judicial District composed of the counties of Carson, Childress, Collingsworth, Donley and Hall, or by the District Judge of which the counties of Carson, Childress, Collingsworth, Donley and Hall are a part thereof, and said salary shall be in addition to transcript fees as now provided by law. Said salary when so fixed and determined by the District Judge of said Judicial District shall be paid monthly, out of the General Fund, or the Jury Fund, or out of any fund available for the purpose as may be determined by the Commissioners Courts, by the respective counties of the Judicial District in accordance with the proportion fixed, made and determined by the District Judge of said Judicial District as to the amount to be paid monthly by each county in the Judicial District.

Sec. 2. Said reporter shall, in addition, receive allowances for his actual and necessary traveling and hotel expenses while actually engaged in the discharge of his duties, not to exceed Six Dollars (\$6) per day for hotel bills, and not to exceed four cents (4¢) a mile when traveling by railway or bus lines, and not to exceed ten cents (10¢) a mile when traveling by private conveyance in going to and returning from the place where such duties are discharged, traveling the nearest practical route. Such expenses shall be paid after the completion of each term of court by the respective counties of the Judicial District for which they are incurred, each county paying the expense incidental to its own regular or special term of court, and said expenses shall be paid to the official shorthand reporter by the Commissioners Court of the county, out of the General Fund of the county upon the sworn statement of the reporter approved by the Judge, provided there shall not be paid to any such official shorthand reporter more than One Thousand, Two Hundred and Fifty Dollars (\$1,250) in any one (1) year under the provisions of this Act.

Sec. 3. From and after the passage of this Act all provisions relating to official shorthand reporters and their duties in district courts shall in all respects govern except that the salary of the official shorthand reporter as provided for in this Act shall be fixed and determined by the District Judge of said Judicial District and not otherwise; and the transcript fees and allowances for traveling and hotel expenses shall be as provided for in this Act, and not otherwise. Acts 1959, 56th Leg., p. 1019, ch. 471.

Emergency. Effective May 30, 1959.

### Art. 2326m. Shorthand reporters in county courts at law in counties of 360,000 to 612,000

In all counties in the State of Texas having a population of not less than three hundred sixty thousand (360,000) nor more than six hundred twelve

thousand (612,000), according to the 1950 Federal Census, the Judge of each District Court, civil or criminal, and the Judge of each County Court at Law, civil or criminal, shall appoint an official shorthand reporter for such court. Such appointment shall be evidenced by an order entered on the minutes of each such court. Such appointment, when once made, shall continue in effect from year to year, unless otherwise ordered by the Judge of the Court in which such reporter serves. The compensation of such reporters shall be not less than Seventy-five Hundred Dollars (\$7500.00) nor more than Eighty-five Hundred Dollars (\$8500.00) per annum; such compensation shall be determined, set, and allowed by the judge of such court or courts within such minimum and maximum compensation authorized hereby, in addition to compensation for transcript fees as provided by law; such compensation shall be paid in twelve (12) equal monthly installments out of the General Fund, Officers Salary Fund, the Jury Fund, or out of any fund available for the purpose, as may be determined by the Commissioners Court of any such county, and shall be in addition to compensation for transcript fees as provided by law. Acts 1959, 56th Leg., p. 52, ch. 27, § 1.

Effective 90 days after May 12, 1959, date of adjournment.

Section 2 of the Act of 1959 repeals all conflicting laws and parts of laws to the extent of such conflict. Section 3 contained a severability clause.

**Art. 2326n. Shorthand reporters in counties of 800,000 or more population**

Section 1. In all counties in the State of Texas having a population of eight hundred thousand (800,000) or more, according to the last preceding federal census, the Judge of each District Court, civil or criminal, and the Judge of each County Court at Law, civil or criminal, shall appoint an official shorthand reporter for such Court. Said appointment shall be evidenced by an order entered in the minutes of each such Court. Such appointment, when once made, shall continue in effect from year to year, unless otherwise ordered by the Judge of the Court in which such reporter serves. The compensation of such reporters shall be fixed by the Commissioners Court after the recommendation of the Judge of the Court in which such reporter serves at not less than Six Thousand Dollars (\$6,000) per annum and not more than Nine Thousand, Six Hundred Dollars (\$9,600) per annum, in addition to compensation for transcripts, statements of fact and other fees.

Sec. 2. A certified copy of the order appointing such reporter and the recommendation of the Judge as to the salary to be paid such reporter shall be transmitted to the Commissioners Court of such counties, who shall annually make provision for the payment of any such salary set by the Commissioners Court out of the general fund, the officers' salary fund, or out of such other fund as may be available for the purpose. The salaries of such reporters shall be paid in twelve (12) equal monthly installments, and shall be in addition to transcript fees, fees for statements of fact and other fees.

Sec. 3. All laws and parts of laws in conflict herewith are hereby repealed to the extent of such conflict; but nothing contained herein shall be construed to repeal Articles 2326a, 2326h, 2327a-1 and 2326c, Vernon's Annotated Civil Statutes. The last four mentioned Articles shall remain in full force and effect. Acts 1959, 56th Leg., p. 485, ch. 215.

Emergency. Effective May 21, 1959.

Section 4 of the Act of 1959, contained a severability clause.

## TITLE 43—COURTS—JUVENILE

Art.		Art.	
2338—9a.	Court of Domestic Relations No. 2 of Dallas County [New].	2338—12.	Juvenile court for Ector county; compensation of judge [New].
2338—10.	Court of Domestic Relations for Nueces County [New].	2338—13.	Court of Domestic Relations for Gregg County [New].
2338—11.	Courts of Domestic Relations for Harris County [New].		

**Art. 2338—1. Delinquent children; juvenile court established in each county; jurisdiction**

**Assumption or financial responsibility for acts of delinquents;  
posting bond**

Sec. 13-B. (a) When any child be adjudged a delinquent child pursuant to Section 3 and Section 13 of this Act and shall be placed on probation in the custody or under the supervision of the child's parents or legal guardian, pursuant to Section 13(1) or Section 13-A of this Act, such parent or person shall assume liability in an amount not to exceed One Thousand Dollars (\$1,000) and shall thereafter be financially liable, not to exceed said amount, to any person suffering damages as a result of the willful or malicious acts or conduct of the child in the same manner and to the same extent that said child would be civilly liable under and by virtue of the laws of this State, were the child a fully competent adult. The liability imposed by this Section shall continue for the length of the term of the child's probation as set by the Juvenile Court.

(b) When any child has been adjudged delinquent, pursuant to Section 3 and Section 13 of Chapter 204, Acts of the Forty-eighth Legislature, 1943, and he or she shall be placed in the custody of his or her parents or any other relative or fit person by the Juvenile Court, (as provided in Section 13(1) or Section 13-A of Chapter 204 of the Forty-eighth Legislature, 1943) the parents or other relative or fit person or persons under whose supervision the child has been placed may be required by the judge of the Juvenile Court, at his discretion to post a cash bond. Such bond shall provide that the child will not violate the terms of his or her probation as prescribed by the Juvenile Court.

(c) The amount of cash bond required by the foregoing Section shall be set by the Judge of the Juvenile Court, at his discretion, but shall not be set so as to exceed:

(1) Seven Hundred Fifty Dollars (\$750) when the child has been declared delinquent for violating any penal law of the grade of felony;

(2) Five Hundred Dollars (\$500) when the child has been declared delinquent for violating any penal law of the grade of misdemeanor punishable by confinement in jail, or by habitually violating any penal law of the grade of misdemeanor punishable by pecuniary fine only;

(3) Three Hundred Dollars (\$300) when the child has been adjudged delinquent for habitually violating any penal ordinance of a political subdivision of this State, or habitually violating a compulsory school attendance law, or habitually so deporting himself or herself as to injure or endanger the morals or health of himself or herself or others or habitually associating with vicious and immoral persons.

Said cash bond, when required, shall be deposited with the Juvenile Court, and the Judge of said Court is authorized to transfer said cash bond for deposit with the County Treasurer or any responsible banking in-

stitution for safekeeping subject to disposition under further orders of said Court.

(d) Should the terms, as set by the Juvenile Court, of the child's probation be violated, the cash bond shall be subject to being forfeited in accordance with the general laws of this State pertaining to bond forfeiture.

(e) When said cash bond has been forfeited in accordance with the laws of this State applicable thereto, the proceeds shall first be used and applied to pay for any damages caused by any acts or conduct of said child that were in violation of the terms of said child's probation and for which said bond was forfeited. Any amount of the said cash bond remaining shall be paid on the direction of the Court to the Texas Youth Council for its use and in furtherance of said Council's purpose as provided in Section 1, Chapter 538, Acts of the Fifty-first Legislature, 1949.<sup>1</sup>

(f) If at the expiration of the term of the child's probation, the cash bond has not been forfeited nor is in the process of being forfeited in accordance with the general law applicable thereto, then the said cash bond shall be of no further force or effect and the amount thereof shall be returned by direction of the Juvenile Court to the person who deposited the bond with the Court.

(g) The County Attorney and/or District Attorney of the County as the case may be shall represent the State in any proceedings for bond forfeiture arising under this Act. Added Acts 1959, 56th Leg., p. 934, ch. 431, § 1.

<sup>1</sup> Article 5143c, § 1.

Emergency. Effective May 30, 1959.

Section 2 of the amendatory Act of 1959 repealed all conflicting laws and parts of laws.

Sections 2 and 3 of the amendatory Act of 1951, read as follows:

"Sec. 2. Pending the designation of juvenile courts under the provisions of this Act, all juvenile courts heretofore designated under the previous law shall continue to function with all powers and jurisdiction heretofore vested in them; it being the intention of the Legislature, how-

ever, that the new designations shall be made in each county of the State within ninety (90) days after the effective date of this Act.

"Sec. 3. If any section, paragraph, sentence, clause, phrase or portion of this Act be held invalid or unconstitutional, such invalidity shall not affect any other section, paragraph, sentence, clause, phrase or portion of this Act, it being the intention of the Legislature to enact such valid portions distinct from other portions thereof."

## Art. 2338—2. Designation of district court as juvenile court in certain counties

Section 1. In counties having ten (10) or more District Courts, either temporary or permanent, and having a Juvenile Board composed of District Judges and the County Judge of said county, such Juvenile Board shall designate one (1) of the District Courts to be the Juvenile Court of such county and may change the designation of such Juvenile Court from time to time when in the opinion of the Juvenile Board the best interest of the people require it.

Provided, however, the Juvenile Board of any county having a population of eight hundred and six thousand (806,000) or more according to the last preceding Federal Census, may designate one or more District Courts, or one or more Courts of Domestic Relations, or the County Court, or one or more of both of such District Courts and Courts of Domestic Relations, or one or more of such District Courts, Courts of Domestic Relations and County Court or any combination thereof, as Juvenile Courts of such county, with all the rights and authority and subject to the same terms and restrictions as provided in this Act; provided, how-

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

ever, that the Juvenile Board of any county having a population of eight hundred and six thousand (806,000) or more according to the last preceding Federal Census, may make such new designation or designations as to it shall seem proper without reference to the provision of Section 4, requiring a new designation within any particular period of time, it being the legislative intent that the matter of designation of one or more Juvenile Courts in any such county be within the discretion of the Juvenile Board of such county. As amended Acts 1959, 56th Leg., 2nd C.S., p. 86, ch. 4, § 1.

Emergency. Effective July 13, 1959.

### Art. 2338—9. Juvenile Court and Court of Domestic Relations for Dallas County

#### Authority of district court judges to hear cases pending in juvenile court

Sec. 21. Judges of all District Courts of this State may sit for, hear and decide cases pending in the Juvenile Court and the Court of Domestic Relations as the sitting for, hearing and deciding of cases is now or may hereafter be authorized by law for all District Courts of Dallas County. Added Acts 1959, 56th Leg., p. 248, ch. 143, § 1.

#### Filing of cases in either court

Sec. 22. Notwithstanding the provisions of Sections 5 and 10 of this Act, the District Judges of Dallas County may provide for the filing of any cases within the jurisdiction of the Juvenile Court and the Domestic Relations Court in either the Juvenile Court or the Domestic Relations Court or in any one or more of the District Courts of Dallas County. Added Acts 1959, 56th Leg., p. 248, ch. 143, § 1.

Emergency. Effective May 6, 1959.

### Art. 2338—9a. Court of Domestic Relations No. 2 of Dallas County

#### Creation of court

Section 1. There is hereby created a Domestic Relations Court in and for Dallas County to be known as Court of Domestic Relations No. 2 of Dallas County.

#### Qualifications of judge; salary

Sec. 2. The Judge of the Court of Domestic Relations No. 2 of Dallas County hereby established, shall be an attorney licensed to practice law in this state. The judge of said court shall be paid a salary which shall be equal to the total salary paid to a District Judge of Dallas County. Said salary shall be paid out of the General Fund of Dallas County in twelve (12) equal monthly installments.

#### Appointment of judge; term of office; vacancies; disqualification; special judge

Sec. 3. The judge of the Court of Domestic Relations No. 2 of Dallas County hereby established, shall be appointed by the Governor by and with the advice and consent of the Senate immediately upon the taking of effect of this Act; said judge so appointed shall be a suitable person to be judge of said court and shall hold office until the next General Election and until his successor shall be duly elected and qualified.

Thereafter, the term of office of the judge of the Court of Domestic Relations No. 2 of Dallas County shall be for four (4) years and said judge shall be appointed and elected as provided by the Constitution and laws of the state for the election or appointment of District Judges. Vacancies in the office shall be filled by appointment by the Governor by and with the consent and advice of the Senate. In the event of disqualification of the judge of said court to try a particular case or because of the illness, inability, failure or refusal of said judge to hold court at any time, the Juvenile Board of said county shall select a special judge who shall hold the court and proceed with the business thereof.

**Dependent, neglected, or delinquent children; prosecution or  
defense of cases by district attorney**

Sec. 4. The District Attorney of Dallas County shall prosecute or defend all cases involving children alleged to be dependent, neglected or delinquent or in support cases coming under the Reciprocal Support Act.

**Concurrent jurisdiction of court**

Sec. 5. Said Court of Domestic Relations No. 2 shall have jurisdiction concurrent with the Court of Domestic Relations of Dallas County and with the District Courts in Dallas County of all cases involving adoptions, removal of disability of minority and coverture, wife and child desertion, delinquent, neglected or dependent child proceedings, Reciprocal Support Act and all jurisdiction, powers and authority now or hereafter placed in the District or County Courts under the juvenile and child welfare laws of this state; and of all divorce and marriage annulment cases, including the adjustment of property rights and custody and support of minor children involved therein, alimony pending final hearing, and any and every other matter incident to divorce or annulment proceedings as well as independent actions involving child custody or support of minor children involved therein, change of name or<sup>1</sup> persons; and all other cases involving justiciable controversies and differences between spouses, or between parents, or between them, or one of them, and their minor children, which are now, or may hereafter be, within the jurisdiction of the District or County Courts; and all cases in which children are alleged or charged to be dependent and neglected children or delinquent children as provided by law. All cases enumerated or included above may be instituted in or transferred to the Court of Domestic Relations or the Court of Domestic Relations No. 2 of Dallas County.

<sup>1</sup> So in enrolled bill.

**Division and transfer of cases**

Sec. 6. Immediately after this Act takes effect the divorce cases now pending in Domestic Relations Court of Dallas County shall be equally divided and one-half of such divorce cases shall be transferred to this court. Thereafter the cases shall be filed in numerical order dividing the cases in such way that each court shall have the same number of cases, or said cases shall be assigned according to the rules promulgated by the District Judges of Dallas County. By and with the consent of the Judge of the Court of Domestic Relations No. 2 and the Juvenile Court, cases within the jurisdiction of these respective courts may be transferred from one court to the other and the judges of the Court of Domestic Relations, Court of Domestic Relations No. 2, and the Juvenile Court of Dallas County may sit for each other in cases coming within the jurisdiction of such courts. All District Courts of Dallas County may likewise

sit for, hear and decide cases pending in said Court of Domestic Relations No. 2 as the sitting for, hearing and deciding of cases is now and may hereafter be authorized by law for all District Courts of Dallas County.

**Court of record; place of sitting; seal; dockets and records**

Sec. 7. The Court of Domestic Relations No. 2 of Dallas County shall be a court of record and shall sit and hold court at the county seat of Dallas County, shall have a seal and maintain all necessary dockets, records and minutes therein.

**Probation department, sheriff and constables; performance of duties**

Sec. 8. It shall be the duty of the Probation Department, the sheriff and constables of Dallas County to furnish said Court of Domestic Relations No. 2 of Dallas County such service in the line of their respective duties as shall be required by said court, and all sheriffs and constables within the State of Texas shall render the same service with reference to process and writs from said Court of Domestic Relations No. 2 of Dallas County as is required of them by law with reference to process and writs from District Courts.

**Writs and orders; contempt**

Sec. 9. The said Court of Domestic Relations No. 2 of Dallas County and the judge thereof, shall have the power to issue writs of habeas corpus and mandamus, injunctions, restraining orders, orders of sale, executions, writs of possession and restitution, and any and all other writs as now or hereafter may be issued under the laws of this state by District Courts, when necessary or proper in cases or matters in which said Court of Domestic Relations No. 2 of Dallas County has jurisdiction, and also shall have power to punish for contempt as provided for District Courts of Dallas County.

**Terms of court**

Sec. 10. The terms of the Court of Domestic Relations No. 2 of Dallas County shall begin on the first Monday in January and July of each year, respectively, and each term of said court shall continue until the convening of the next successive term.

**Membership of judge on juvenile board; compensation**

Sec. 11. The judge of the Court of Domestic Relations No. 2 of Dallas County shall be a member of the Juvenile Board of Dallas County, which shall hereafter be composed of the judges of the several district courts and Criminal District Court of Dallas County, the judges of the Courts of Domestic Relations of Dallas County, the Juvenile Court of Dallas County, and the County Judge of Dallas County.

The judges of the District Courts and Criminal District Courts shall continue to receive such compensation for their services as members of the Juvenile Board and for such other administrative duties as are now or may hereafter be required, from county funds, as they are entitled to receive under General or Special Law. The members of the Juvenile Board shall continue to have the same authority as is now provided by law, and such Juvenile Board may assign the Judge of the Court of Domestic Relations No. 2 of Dallas County to handle the duties of the Juvenile Court and in like manner assign the judges of the Juvenile Court to handle the duties of Domestic Relations Courts of Dallas County.



**Court reporter; bailiff**

Sec. 12. The judge of the Court of Domestic Relations No. 2 of Dallas County shall have authority to appoint a court reporter, who shall receive the same compensation as provided by law for court reporters of District Courts in Dallas County. A bailiff shall be designated by the Sheriff of Dallas County to serve said court as in other courts of the county.

**Clerk**

Sec. 13. The district clerk of Dallas County shall also act as District Clerk for the Court of Domestic Relations No. 2 of Dallas County.

**Attendance of sheriff; execution of process; fees**

Sec. 14. The sheriff of Dallas County shall attend either in person or by deputy the Court of Domestic Relations No. 2 of Dallas County as required by law in Dallas County or when required by the judge thereof, and the sheriffs and constables of the several counties of this state, when executing process out of said court, shall receive fees provided by General Law for executing process out of District Courts.

**Appeals**

Sec. 15. Appeals in all civil cases from judgments and orders of the Court of Domestic Relations No. 2 of Dallas County shall be to the Court of Civil Appeals for the Fifth Supreme Judicial District as now or hereafter provided for appeals from District and County Courts and in all criminal cases appeals shall be to the Court of Criminal Appeals.

**Practice and procedure**

Sec. 16. The practice and procedure, rules of evidence, selection of juries, issuance of process and all other matters pertaining to the conduct of trials and hearings in the Court of Domestic Relations No. 2 of Dallas County, shall be governed by provisions of this Act and the laws and rules pertaining to District Courts; provided that juries shall be composed of twelve (12) members.

**Partial invalidity**

Sec. 17. If any Section, clause or part of this Act shall be held invalid, it is hereby declared to be the intention of the Legislature that the remainder thereof not held invalid shall remain in effect, and the validity of the remainder of this Act shall not be affected thereby. Laws relating to the handling of juvenile cases not in conflict with this Act shall govern the investigation of juvenile cases, hearings and disposition of cases. Acts 1959, 56th Leg., 3rd C.S., p. 389, ch. 13.

Effective 90 days after Aug. 6, 1959, date of adjournment.

**Art. 2338—10. Court of Domestic Relations for Nueces County****Creation of court**

Section 1. There is hereby created a Court of Domestic Relations in and for Nueces County, Texas.

**Judge; compensation**

Sec. 2. The Judge of the Court of Domestic Relations hereby established shall be the Judge of the County Court at Law No. 2 for Nueces

County; these duties shall be in addition to his regular duties as Judge of the County Court at Law No. 2; the Judge of the County Court at Law No. 2 shall be a member of the Juvenile Board of Nueces County, Texas, and he may be allowed compensation for this additional work in an amount not to exceed the amount paid by Nueces County, Texas, to the other members of the Juvenile Board of Nueces County, Texas, as members of said Juvenile Board, such additional compensation, if authorized by the Commissioners Court of Nueces County, to be paid out of the General Funds of Nueces County, Texas, in twelve (12) equal monthly installments.

#### Jurisdiction

Sec. 3. The Court of Domestic Relations shall have jurisdiction concurrent with the District Courts of Nueces County of all cases involving adoptions, removal of disability of minority and coverture, wife and child desertion, delinquent, neglect or dependent child proceedings, Reciprocal Support Act and all jurisdiction, powers and authority now or hereafter placed in the District or County Courts under the Juvenile and Child Welfare Laws of this State; and all divorce and marriage annulment cases, including the adjustment of property rights and custody and support of minor children involved therein, alimony pending final hearing, and any and every other matter incident to divorce or annulment proceedings, as well as dependent actions involving child custody or support of minors, change of name of persons; and all other cases involving justiciable controversies and differences between spouses, or between parents, or between them or one of them and their minor children, which are now or may be hereafter within the jurisdiction of the District or County Courts; and all cases in which children are alleged or charged to be dependent and neglected children, or delinquent children, as provided by law. All cases enumerated or included above shall be instituted in or transferred to the Court of Domestic Relations.

#### Transfer of cases between courts

Sec. 4. Immediately after this Act takes effect all cases enumerated or included above now pending in the District Courts of Nueces County, with the exception of the cases involving delinquent children and children charged to be dependent and neglected, shall be transferred to the Court of Domestic Relations created by this Act. The cases involving delinquent children and children charged to be dependent and neglected shall be tried by the Court designated as the Juvenile Court of Nueces County, Texas. Thereafter the Judges of the District Courts of Nueces County may transfer any case within the jurisdiction of the Court of Domestic Relations created by this Act to said Court of Domestic Relations, and the Judge of the Court of Domestic Relations may transfer any case pending in said Court to any District Court of Nueces County, the particular District Court to which the transfer is to be made to be designated by the Presiding Judge of the District Courts of Nueces County. Said Court of Domestic Relations may also sit for any of the District Courts of Nueces County and hear and decide for such Courts any case coming within the jurisdiction of the Court of Domestic Relations created by this Act. All District Courts of Nueces County may likewise sit for, hear and decide cases pending in the Court of Domestic Relations, as, the sitting for, hearing and deciding cases is now or hereafter may be authorized by law for all District Courts of Nueces County.

**Filing of cases**

Sec. 5. Immediately after this Act takes effect, the District Clerk of Nueces County, who shall be Clerk of the Court of Domestic Relations, shall file in the Court of Domestic Relations created by this Act all cases involving adoptions and independent actions involving child custody and support of minors, including cases under the Reciprocal Support Act, all applications to change the name of persons, and all divorce cases.

**Disqualification of judge; selection of special judge**

Sec. 6. Should the Judge be disqualified to try a particular case, or should the Judge by reason of illness or other inability fail or refuse to hold Court at any time, on matters pending in the Court of Domestic Relations only, such fact shall be brought to the attention of the Presiding Judge of the District Courts of Nueces County by any practicing lawyer of Nueces County, whereupon such matters as require attention shall be promptly assigned by the Presiding Judge to one of the District Courts of Nueces County for action and disposition in the same manner as other matters are assigned to the several District Courts. In the event it should ever become necessary to select a Special Judge for the Court of Domestic Relations, such Special Judge shall be selected in the manner provided by law for the selection of a Special Judge of the District Court. Nothing herein shall be construed to alter, change or amend in any way the provisions of law now applicable to the selection of a Special Judge of the County Court at Law No. 2 of Nueces County, but the provisions hereof shall be cumulative of existing law thereon.

**County attorney; duty to prosecute or defend**

Sec. 7. The County Attorney of Nueces County shall prosecute or defend all cases involving children alleged to be dependent, neglected or delinquent, and the District Attorney of Nueces County shall prosecute all support cases coming under the Reciprocal Support Act.

**Court of record; place of court; seal; dockets and records**

Sec. 8. The said Court of Domestic Relations shall be a Court of record, shall sit and hold Court at the County seat of Nueces County, shall have a seal and maintain all necessary dockets, records and minutes therein, these dockets, records and minutes shall be separate from the dockets, records and minutes of the County Court at Law No. 2 of Nueces County, Texas.

**Probation department, sheriffs and constables, etc.; duties**

Sec. 9. It shall be the duty of the Probation Department, the Sheriff and Constables of Nueces County, Texas, and all Welfare Agencies of Nueces County having as their objective the protection of children, to furnish said Court of Domestic Relations such service in the line of their respective duties as shall be required by said Court, and all Sheriffs and Constables within the State of Texas shall render the same service with reference to process and writs from said Court of Domestic Relations as is required of them by law with reference to process and writs from District Courts.

**Writs and orders; contempt**

Sec. 10. The said Court of Domestic Relations and the Judge thereof shall have the power to issue writs of habeas corpus and mandamus, in-

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

junctions, restraining orders, orders of sale, executions, writs of possession and restitution, and any and all other writs as now or hereafter may be issued under the laws of this State by District Courts, when necessary or proper in cases or matters in which said Court of Domestic Relations has jurisdiction, and also shall have power to punish for contempt.

#### Terms of court

Sec. 11. The terms of the Court of Domestic Relations shall begin on the first Monday in January and July of each year, respectively, and each term of said Court shall continue until the convening of the next successive term.

#### Juvenile board; composition; compensation of members

Sec. 12. The Judge of the Court of Domestic Relations shall be a member of the Juvenile Board of Nueces County, which shall hereafter be composed of the Judges of the several District Courts of Nueces County, the County Judge of Nueces County, and the Judge of the Court of Domestic Relations. The Judges of the District Courts shall continue to receive such compensation for their services as members of the Juvenile Board and for such other administrative duties as are now or may hereafter be required, from County funds, as they are entitled to receive under the General or Special Laws. The members of the Juvenile Board shall continue to have the same authority as is now provided by law.

#### Court reporter

Sec. 13. The Judge of the Court of Domestic Relations shall have authority to use the Court Reporter appointed as the official Court Reporter of the County Court at Law No. 2 of Nueces County.

#### Bailiff

Sec. 14. The bailiff shall be the same one designated by the Sheriff of Nueces County to serve the County Court at Law No. 2.

#### Duties of sheriff

Sec. 15. The Sheriff of Nueces County shall attend either in person or by deputy the Court of Domestic Relations as required by law in Nueces County, or when required by the Judge thereof, and the Sheriffs and Constables of the several Courts of this State when executing process out of said Court, shall receive fees provided by the General Laws for executing process out of District Courts.

#### Appeals

Sec. 16. Appeals in all civil cases from judgments and orders of the Court of Domestic Relations shall be to the Court of Civil Appeals for the Fourth Supreme Judicial District as is now or hereafter provided for appeals from District and County Courts, and all criminal cases appeals shall be to the Court of Criminal Appeals.

#### Practice and procedure; number of jurors

Sec. 17. The practice and procedures, rules of evidence, selection of juries, issuance of process, and all other matters pertaining to the conduct of trials and hearings in the Court of Domestic Relations shall be governed by the provisions of this Act and laws pertaining to District Courts; provided that juries shall be composed of twelve (12) members.

**Effect of act on County Court at Law No. 2**

Sec. 18. Nothing in this Act shall repeal, modify, amend, or impair in any way the provisions of Acts, 1954, Fifty-third Legislature, First Called Session, page 42, Chapter 14, as amended by Acts, 1955, Fifty-fourth Legislature, page 5, Chapter 5,<sup>1</sup> and the Judge hereof shall continue to serve in the capacity of Judge of the County Court at Law No. 2 of Nueces County subject to all the rights, duties and obligations now or hereafter to be conferred on him by law in the capacity of Judge of such Court. The rights, duties and obligations conferred on such Judge by the provisions of this Act shall be in addition to, and not in lieu of, all rights, duties and responsibilities now or hereafter to be conferred on him by law.

<sup>1</sup> Articles 1970—339, 1970—339A.

**Jurisdiction of district courts of Nueces County**

Sec. 19. Nothing in this Act shall diminish the jurisdiction of the several District Courts of Nueces County, but such Courts shall retain and continue to exercise such jurisdiction as is now or may be hereafter conferred by law. Such District Courts shall continue to exercise concurrent jurisdiction on all matters which by this Act are brought within the concurrent jurisdiction of the Court of Domestic Relations, and none of the District Courts of Nueces County shall be relieved by the provisions of this Act of their several responsibilities for the handling and disposition of all matters which are by this Act brought within the concurrent jurisdiction of the Court of Domestic Relations, as time and the condition of the dockets of such District Courts will permit. Acts 1959, 56th Leg., p. 56, ch. 31.

Emergency. Effective July 1, 1959.

Section 20 of the Act of 1959 contained a severability clause.

County courts at law numbers 1 and 2 of Nueces county, see arts. 1970—339, 1970—339A.

District courts of Nueces county, see art. 199(94, 105, 117).

Election of special judge on disqualification of regular judge, see art. 2092.

**Art. 2338—11. Courts of Domestic Relations for Harris County**

**Creation of Courts**

Section 1. There are hereby created two Courts of Domestic Relations to be known as Court of Domestic Relations No. 2 in and for Harris County, Texas, and Court of Domestic Relations No. 3 in and for Harris County, Texas.

**Judges: Juvenile Board**

Sec. 2. The Judge of the Court of Domestic Relations No. 2 and the Judge of the Court of Domestic Relations No. 3 shall each be a legally licensed attorney at law in the state. No person shall be elected or appointed judge of said courts who has not been a practicing attorney of the State of Texas for at least five (5) years immediately prior to his appointment or election. They shall be paid a salary which shall be equal to the total salary paid to a District Judge of Harris County. Their salaries shall be paid out of the General Fund of Harris County in twelve (12) equal monthly installments. They shall each be a member of the Juvenile Board of Harris County, which shall hereafter be composed of the judges of the several District Courts and Criminal District Courts of Harris County, the County Judge of Harris County, and the judges of the several Courts of Domestic Relations for Harris County, which Juvenile Board shall be

authorized to designate the Court of Domestic Relations No. 2 and the Court of Domestic Relations No. 3 as Juvenile Courts of Harris County. Judges of the District Courts and Criminal District Courts and Court of Domestic Relations shall continue to receive such compensation for their services as members of the Juvenile Board and otherwise from county funds as they are entitled to receive under general or special law.

#### Jurisdiction

Sec. 3. Said Court of Domestic Relations No. 2 and Court of Domestic Relations No. 3 shall have jurisdiction concurrent with the District Courts and Court of Domestic Relations situated in said county of all cases involving adoptions, removal of disability of minority and coverture, change of name of persons, delinquent, neglected or dependent child proceedings, Reciprocal Support Act, and all jurisdiction, powers and authority now or hereafter placed in the District, Domestic Relations or County Courts under the juvenile and child-welfare laws of this state; and of all divorce and marriage annulment cases, including the adjustment of property rights and custody and support of minor children involved therein, alimony pending final hearings, and any and every other matter incident to divorce or annulment proceedings, as well as independent actions involving child custody or support; and all other cases involving justiciable controversies and differences between spouses, or between parents, or between them, or one of them, and their minor children, which are now, or may hereafter be, within the jurisdiction of the District, Domestic Relations or County Courts; and all cases in which children are alleged or charged to be dependent and neglected children or delinquent children as provided by law. All cases enumerated or included above may be instituted in or transferred to said courts.

#### Transfer of Cases and Papers

Sec. 4. The County Court of Harris County, the County Courts at Law of Harris County, and the District Courts of Harris County may transfer to the Court of Domestic Relations or Court of Domestic Relations No. 2 or Court of Domestic Relations No. 3 any and all cases, in their respective courts in Harris County, Texas, which said Courts of Domestic Relations are hereby given jurisdiction, including all filed papers and certified copies of all orders theretofore entered in said cases.

#### Writs and Process in Transferred Cases

Sec. 5. All writs and process issued by or out of a District, Domestic Relation, or County Court prior to the time any case is transferred by any of said courts to the Court of Domestic Relations No. 2 and Court of Domestic Relations No. 3 shall be returned and filed in said Domestic Relations Courts and shall be as valid and binding upon the parties to such transferred cases as though such writ or process had been issued out of the said Courts of Domestic Relations No. 2 and No. 3, and all waivers of process, and other instruments executed prior to the transfer of any case shall also be as valid and binding as though executed after such transfer.

#### Court of Record; Place of Sitting; Seal; Dockets and Records; Clerks

Sec. 6. The said Court of Domestic Relations No. 2 and Court of Domestic Relations No. 3 shall be courts of record; shall sit and hold court at the county seat in Harris County; shall have a seal, and maintain all necessary dockets, records and minutes therein. The District Clerk of Harris County shall serve as the clerk of said courts. He shall

keep a fair record of all acts done and proceedings had in said courts and shall perform generally all such duties as are required generally of district clerks insofar as the same may be applicable in these courts. The seal of the Court of Domestic Relations No. 2 shall have a star of five points with the words "Court of Domestic Relations No. 2, Harris County, Texas," engraved thereon. The seal of the Court of Domestic Relations No. 3 shall have a star of five points with the words "Court of Domestic Relations No. 3, Harris County, Texas," engraved thereon.

**Term of Office of the Judges; Appointment and Election; Removal;  
Vacancies; Cooperation by Juvenile Board; Disqualification,  
etc; Special Judges**

Sec. 7. The term of office of the Judge of the Court of Domestic Relations No. 2 and the Judge of the Court of Domestic Relations No. 3 shall be for a period of four (4) years, the first full term of the Court of Domestic Relations No. 2 and the Court of Domestic Relations No. 3 to commence on January 1, 1961. Immediately upon passage of this Act, the Governor shall appoint a suitable person as judge to each of said courts, such judges to hold office until the next general election and until their successors shall be duly elected and qualified. Thereafter, each of such judges shall be elected as provided by the Constitution and laws of the state for the election of District Judges. He shall be subject to removal of office for the same reasons and in the same manner as is provided by the Constitution and laws of the state for the removal of county officers. Vacancies in each office shall be filled by appointment by the Governor. The Juvenile Board and its members shall give counsel and advice to said Judges of the Courts of Domestic Relations Nos. 2 and 3, when deemed necessary or when sought by them; and shall cooperate with them in the administration of the affairs of said courts. In the event of disqualification of either of the judges to try a particular case, or because of the illness, inability, failure or refusal of said judges to hold court at any time the Juvenile Board shall select a special judge who shall hold the court and proceed with the business thereof.

**Boards and Officers, Duties of**

Sec. 8. It shall be the duty of all officers, agents and employees of the Probation Department, Child Welfare Board, County Welfare Office, County Health Officer, Sheriff, and Constable of Harris County to furnish to said courts such services in the line of their respective duties as shall be required by said courts, and all sheriffs, and constables within the State of Texas, shall render the same service and perform the same duties with reference to process and writs from said courts as is required of them by law with reference to process and writs from District Courts.

**Court Reporter; Bailiff**

Sec. 9. The judges of each of the courts created herein shall have authority to appoint a court reporter, who shall receive the same compensation as provided by law for court reporters of District Courts in Harris County and whose salary shall be paid by the Commissioners Court of Harris County. A bailiff shall be designated by the Sheriff of Harris County to serve in each court created herein as in other courts of the county.

**Custody of Children; Investigations**

Sec. 10. In all suits for divorce where it appears from the petition or otherwise that the parties to such suit have a child or children under

the age of eighteen (18) years, and in any other case involving the custody of any such child, the said courts or judges thereof, in its or their discretion, may require any such juvenile officer or investigator to make a thorough and complete investigation as to the necessities, environment and surroundings of such child or children, and to make report thereof to such court, and, if desired by the court, to produce such evidence on any hearing in such case as may have been developed in connection with such examination.

#### Writs and Orders; Contempt

Sec. 11. The said courts and the judges thereof shall have the power to issue writs of habeas corpus and mandamus, injunctions, writs of possession and restitution, and any and all other writs as now or hereafter may be issued under the laws of this state by District Courts, when necessary or proper in cases or matters in which said Courts of Domestic Relations have jurisdiction, and also shall have the power, as in District Courts, to punish for contempt.

#### Terms of Court

Sec. 12. The first term of such courts created herein shall begin when the judge of such court is duly selected and qualified, and remain in session until the first day of the following September; and its terms shall thereafter begin on the first day of September of each year and remain in session continuously to and including the thirty-first day of August of the next year.

#### Appeals

Sec. 13. Appeals in all civil cases from judgments and orders of said courts shall be to the Court of Civil Appeals of the First Supreme Judicial District as now or hereafter provided for appeals from District and County Courts and in all criminal cases appeals shall be to the Court of Criminal Appeals.

#### Procedure

Sec. 14. The practice and procedure, rules of evidence, selection of juries, issuance of process and all other matters pertaining to the conduct of trials and hearings in said courts shall be governed by provision of this Act and the laws and rules pertaining to District Courts; provided, that juries shall be composed of twelve (12) members.

#### District Attorney to Prosecute or Defend

Sec. 15. The District Attorney of Harris County shall prosecute or defend all cases involving children alleged to be dependent, neglected or delinquent, or in which the Probation Officer, Child Welfare Board, County Welfare Office, County Health Officer or any other welfare agency is interested.

#### Transfer of Cases between Courts

Sec. 16. All cases, complaints and other matters over which the said Courts of Domestic Relations No. 2 and No. 3 are herein given jurisdiction, may be transferred to, or instituted in either of said courts; but either of said courts, and the judges therein, may transfer any such cases or matters to the county, Domestic Relations or District Court having jurisdiction thereof under the laws of the state, with the consent of the judge of said court, to be tried in such court to which such transfer is made. Acts 1959, 56th Leg., p. 540, ch. 242.

Emergency. Effective May 26, 1959.



Exchange and Transfer of Cases

Sec. 16-A. The judge of said Court of Domestic Relations of Harris County, and the judges of the said courts of Domestic Relations Nos. 2 and 3 of Harris County may, in their discretion, exchange benches or courts from time to time, and may transfer cases and other proceedings from one court to another, and any or either of said judges of said courts of Domestic Relations of Harris County may, in his own court room, try and determine any case or proceeding pending in either of such other courts of Domestic Relations without having the case transferred, or may sit in any other of such courts and hear and determine any case there pending, and every judgment and order shall be entered in the minutes of the court in which the case is pending and at the time the judgment or order is rendered, and two or more of such judges of such court of Domestic Relations may try different cases in the same court at the same time, and each may occupy his own court room or the court room of any other such court. The judge of any or either of such court may issue restraining orders and injunctions, or other orders and processes returnable to any other such judge of such court and any such judge may transfer any case or proceeding pending in his court to any other of said courts, and the judge of any such court to which a case or proceeding is transferred shall receive and try the same, and in turn shall have power, in his discretion, to transfer any such case to any other of said courts, and any other such judge may in his court room try any case pending in any other of such courts. Added Acts 1959, 56th Leg., 1st C.S., p. 35, ch. 12, § 1.

Emergency. Effective June 27, 1959.

Second § 16 of the Act of 1959 contained a severability clause and section 17 repealed all conflicting laws and parts of laws to the extent of such conflict.

Art. 2338—12. Juvenile court for Ector county; compensation of judge

Section 1. The County Court at Law of Ector County shall be the Juvenile Court for Ector County and exercise such jurisdiction in addition to the duties now imposed upon such court by law.

Sec. 2. The Judge of the County Court at Law of Ector County shall exercise the duties of Judge of the Juvenile Court of Ector County in addition to the duties now imposed upon him by law as Judge of the County Court at Law of Ector County.

Sec. 3. The Judge of the County Court at Law of Ector County in addition to the compensation received as Judge of the County Court at Law of Ector County may be paid a salary, not to exceed Three Thousand Dollars (\$3,000.00), for his services as Judge of the Juvenile Court of Ector County, said additional salary to be paid out of the General Fund of Ector County on the order of the Commissioners Court of said county in equal monthly installments. Acts 1959, 56th Leg., p. 727, ch. 331.

Emergency. Effective May 30, 1959.

Section 4 of the Act of 1959 repealed all conflicting laws and parts of laws to the extent of such conflict. As to all other laws and parts of laws, this Act shall be cumulative.

County court at law for Ector County, see art. 1970—346.

Title of Act:

An Act to provide that the Judge of the County Court at Law of Ector County shall

be the County Juvenile Judge; providing that the County Court at Law of Ector County be the Juvenile Court of Ector County; providing for an additional salary to be paid said Judge for services as Juvenile Judge; repealing all laws in conflict; and declaring an emergency. Acts 1959, 56th Leg., p. 727, ch. 331.

## Art. 2338—13. Court of Domestic Relations for Gregg County

**Creation of court**

Section 1. There is hereby created a Court of Domestic Relations in and for Gregg County, Texas.

**Jurisdiction**

Sec. 2. Said Court of Domestic Relations shall have jurisdiction of all cases involving adoptions, removal of disabilities of minority, change of name of persons, delinquent, neglected or dependent child proceedings and all jurisdiction, powers and authority now or hereafter placed in the district or county courts under the juvenile or child welfare laws of this State; and all divorce and marriage annulment cases, including the adjustment of property rights involved therein, as well as cases of child support, alimony pending final hearing and adjustment of property rights, as well as any and every other incident to divorce or annulment proceedings; and all other cases of domestic relations involving judicial controversy and differences between parents or between them and their minor children which are now or may hereafter be within the jurisdiction of the district or county courts in the manner provided by Article 2337, 2338-1, Revised Civil Statutes of Texas, 1925, Acts of the Regular Session of the Forty-eighth Legislature, 1943, Chapter 204, page 313, and Acts of the Regular Session of the Forty-ninth Legislature, 1945, Chapter 35, page 52, and any other Article of the Civil or Penal Statutes of this State. It shall also have jurisdiction over all criminal cases involving crimes against children, including wife and child desertion, contributing to the delinquency of a minor, enticing a minor from legal custody as provided in Articles 602, 534, 534a, 535, and amendments thereto of the Penal Code of this State; and provided that all cases above enumerated may be instituted in or transferred to said Court.

**Qualifications of judge; term of office**

Sec. 3. The Judge of the Court of Domestic Relations hereby established shall be a legally licensed attorney-at-law in the State. No person shall be elected or appointed Judge of said Court who has not been a practicing attorney of the State of Texas for at least four (4) years immediately prior to his appointment or election. The person elected such Judge shall hold the office for four (4) years and until a successor shall have been duly elected and qualified.

**Appointment of judge; term of office; subsequent elections; quarters for court**

Sec. 4. Upon the effective date of this Act, the Commissioners Court of Gregg County shall appoint a Judge of the Court of Domestic Relations in and for Gregg County who shall hold office until the next General Election after said appointment and until his successor shall have been elected and qualified. Thereafter, the Judge of the Court of Domestic Relations of Gregg County shall be elected as provided by the Constitution and Laws of this State for the election of Judges of the County Domestic Relations Courts.

The Commissioners Court of Gregg County shall provide suitable quarters for the holding of said Court.

**Salary of judge; oath**

Sec. 5. The Judge of the Court of Domestic Relations of Gregg County shall be paid at a salary rate no greater than that set by a majority vote of

the Commissioners Court of Gregg County. The Judge of the Court of Domestic Relations of Gregg County shall take the oath of office as required by law relating to County Judges.

**Transfer of cases from other courts**

Sec. 6. When the Court of Domestic Relations is organized and the Judge thereof shall qualify, the County Judge of Gregg County and the Judges of the Seventy-first Judicial District and the One Hundred Twenty-fourth Judicial District may transfer to said Court of Domestic Relations all cases which may then be pending in their respective Courts in Gregg County of which said Court of Domestic Relations is hereby given jurisdiction including all filed papers and certified copies of all orders entered by them.

**Transfers to other court**

Sec. 7. All cases and other matters over which the Court of Domestic Relations is herein given jurisdiction may be transferred to or instituted in said Court but the Judge of said Court may transfer any such cases or matters to the County or District Courts having jurisdiction thereof under the laws of the State to be tried in such Court in which such transfer is made with the permission and consent of the Judge thereof.

**Place of holding court; dockets and minutes**

Sec. 8. The said Court of Domestic Relations shall sit and hold court in Gregg County and shall maintain all necessary dockets and minutes therein.

**Officers and boards to furnish suggestions**

Sec. 9. It shall be the duty of all officers, agents, and employees of the Child Welfare Department, County Welfare Office, County Health Officer, Sheriff and Constables within Gregg County to furnish to said Court such suggestions in the line of their respective duties as shall be required by said Court.

**Appointment of officers, investigators and court reporters; salaries**

Sec. 10. The Judge of the Court of Domestic Relations shall have authority to appoint such officers and investigators that might be necessary to the proper administration of its jurisdiction in Gregg County; when he deems it necessary to the proper administration of such Court, he may appoint a Court Reporter provided such appointments are approved by the Commissioners Court of Gregg County, by a majority vote of said members, the salaries and compensation of such officers and Court Reporter to be determined by the Commissioners Court of Gregg County by a majority vote of said members and to be paid by the Commissioners Court out of the General Fund of Gregg County for the services rendered therein.

**Injunctions and writs; contempts**

Sec. 11. The Judge of the Court of Domestic Relations herein created shall have power to issue injunctions, temporary injunctions and restraining orders and such other writs as are now or hereafter may be issued under the laws of this State by the County and District Courts when necessary in cases or matters in which said Court has jurisdiction, and also power to punish for contempt.

**Terms of court; number of sessions**

Sec. 12. Terms of the Court of Domestic Relations in and for Gregg County shall be as follows: on the first Mondays in January and July of

each year and may continue until the date herein fixed for the beginning of the next succeeding term. As soon as this Act becomes effective and the Judge of the Court of Domestic Relations is appointed and qualified, he shall begin a term of Court which shall continue until the day fixed for the beginning of the next succeeding term of Court and thereafter the terms of Court of the Court of Domestic Relations in and for Gregg County, shall begin and end on the above-mentioned date. The Judge of said Court in his discretion may hold as many sessions of Court in any term of the Court as is deemed by him proper and expedient for the dispatch of business.

#### **Disqualification of judge; special judge; compensation**

Sec. 13. In the event of disqualification of the Judge of the Court of Domestic Relations to try a particular case because of illness, inability, failure or refusal of said Judge to hold Court at any time, a Special Judge of the Court of Domestic Relations of Gregg County may be appointed or elected as provided by law relating to County Courts and to the Judge thereof, who shall receive the same compensation as that provided in Section 5 of this Act; such compensation shall not be deducted from the salary of the Regular Judge, but shall be in addition thereto.

#### **Vacancies in office**

Sec. 14. Any vacancy in the office of the Judge of the Court of Domestic Relations in and for Gregg County shall be filled by the Commissioners Court of Gregg County by a majority vote of its members, and when so filled, the Judge shall hold office until the next General Election and until his successor is elected and qualified.

#### **Appeals**

Sec. 15. Appeals in all Civil cases from judgments and orders of said Court shall be to the Court of Civil Appeals of the Sixth Supreme Judicial District as now or hereafter provided for appeals from District and County Courts, and in all criminal cases, appeals shall be to the Court of Criminal Appeals.

#### **Practice and procedure**

Sec. 16. The practice and procedure, rules of evidence, selection of juries, issuance of process and all other matters pertaining to the conduct of trials and hearings in said Court shall be governed by the laws and rules pertaining to District and County Courts providing the juries shall be composed of twelve (12) members.

#### **Writs and process in transferred cases**

Sec. 17. All writs and processes issued by or out of the Districts or County Court prior to the time any case is transferred by either of said Courts to the Court of Domestic Relations in and for Gregg County shall be returned and filed in the Court of Domestic Relations and shall be as valid and binding upon the parties to such transferred cases as though such writ or process had been issued out of the Court of Domestic Relations, and all waivers of process and other instruments executed prior to the transfer of any case shall also be as valid and binding as though executed under such transfer.

#### **Court of record; place of sitting; seal; dockets and records; clerk**

Sec. 18. The said Court of Domestic Relations shall be a Court of Record, shall sit and hold Court at the County seat in Gregg County, shall

have a seal and maintain all necessary dockets, records, and minutes therein. The District Clerk of Gregg County shall serve as a Clerk of said Court. He shall keep a fair record of all acts done and proceedings had in said Court and shall perform generally all such duties as are required generally of District Clerks in so far as the same may be applicable in this Court. The seal of said Court shall have a star of five (5) points with the words "Court of Domestic Relations, Gregg County, Texas" engraved thereon.

**Sheriffs and constables; performance of duties**

Sec. 19. All sheriffs and constables within the State of Texas shall render the same service and perform the same duties with reference to process and writs for said Court of Domestic Relations as is required of them by law with reference to process and writs for District Courts.

**Suits involving custody of children; investigations**

Sec. 20. In all suits for divorce where it appears from the petition or otherwise that the party to such has a child or children under the age of eighteen (18) years, and in any other case involving the custody of any such child or children, the said Court or Judge thereof in its or his discretion may require any such Juvenile Officer, Investigator or Child Welfare Unit to make a thorough and complete investigation as to the necessities, environment and surroundings of the child or children and of the disposition that shall be made of such child or children and to make reports thereof to the Court, and if desired by the Court, to produce such evidence on any hearing in such case as may have been developed in connection with such examination or investigation.

**Dependent, neglected or delinquent children; prosecution and defense  
of cases by Criminal District Attorney**

Sec. 21. The Criminal District Attorney of Gregg County or his duly and legally qualified assistant, or assistants, shall prosecute or defend all cases involving children alleged to be dependent, neglected or delinquent, or in which the Probation Officer, Child Welfare Unit, County Welfare Office, County Health Officer or any other welfare agency is interested and shall represent the State in all proceedings in said Court of Domestic Relations.

**Juvenile Board; counsel and advice; cooperation with judge**

Sec. 22. The Juvenile Board and its members shall give counsel and advice to the Judge of said Court of Domestic Relations when deemed necessary or when sought by him and shall cooperate with him in the administration of the affairs of said Court.

**Removal of judge**

Sec. 23. The Judge of said Court of Domestic Relations shall be subject to removal from the office for the same reasons and in the same manner as is provided by the Constitution and laws of this State for the removal of County Officers.

**Partial invalidity**

Sec. 24. If any Section, clause or part of this Act shall be held invalid, it is hereby declared to be the intention of the Legislature that the remainder thereof not held invalid shall remain in effect and the validity of the remainder of this Act shall not be affected thereby. Acts 1959, 56th Leg., p. 952, ch. 443.

Effective 90 days after May 12, 1959, date of adjournment.

## TITLE 44—COURTS—COMMISSIONERS

## 1. COMMISSIONERS COURTS

- Art.  
2350n. Repealed.  
2350o. Allowance for travelling expenses  
and automobile depreciation  
[New].

## 2. POWERS AND DUTIES

- 2367a. Counties and cities; identical bids;  
casting of lots [New].  
2368a—6. Validation of contracts, scrip  
and time warrants; refunding  
bonds; acts and proceedings;  
exceptions [New].

Art.

- 2372h—1. Vacations, holidays and sick  
leave for employees of county  
officers and commissioners  
courts [New].  
2372h—2. Hospitalization insurance for  
county officials and employees  
[New].  
2372o. County Building Authority Act  
[New].

## 1. COMMISSIONERS COURTS

Art. 2350n. Repealed. Acts 1959, 56th Leg., p. 502, ch. 221, § 7. Eff.  
May 22, 1959

Article 2350n was derived from Acts 1951,  
52nd Leg., p. 812, ch. 456 as amended by  
Acts 1955, 54th Leg., p. 1153, ch. 437, § 1

and related to allowances for travelling ex-  
penses and automobile depreciation. See  
now, art. 2350o.

Art. 2350o. Allowance for travelling expenses and automobile deprecia-  
tion

Section 1. In any county in this State having a population of not more than twenty-one thousand, five hundred (21,500), according to the last preceding or any future Federal Census, the Commissioners Court is hereby authorized to allow each member of such Commissioners Court the sum of not exceeding Seventy-five Dollars (\$75) per month for traveling expenses and depreciation on his automobile while on official business within the county. Each member of such Commissioners Court shall pay all expenses in the operation of such automobile and keep same in repair free of any other charge to the county.

Sec. 2. In any county in this State having a population in excess of twenty-one thousand, five hundred (21,500) but not in excess of one hundred twenty-four thousand (124,000), according to the last preceding or any future Federal Census, the Commissioners Court is hereby authorized to allow each member of the Commissioners Court the sum of not exceeding One Hundred Dollars (\$100) per month for traveling expenses and depreciation on his automobile while on official business within the county. Each member of such Commissioners Court shall pay all expenses in the operation of such automobile and keep same in repair free of any other charge to the county.

Sec. 3. In any county in this State having a population in excess of one hundred twenty-four thousand (124,000) but not in excess of six hundred thousand (600,000), according to the last preceding or any future Federal Census, the Commissioners Court is hereby authorized to allow each member of the Commissioners Court the sum of not exceeding One Hundred and Twenty-five Dollars (\$125) per month for traveling expenses and depreciation on his automobile while on official business within the county. Each member of such Commissioners Court shall pay all expenses in the operation of such automobile and keep same in repair free of any other charge to the county.

Sec. 4. In any county of this State having a population in excess of six hundred thousand (600,000), according to the last preceding or any future Federal Census, the Commissioners Court is hereby authorized to allow each member of the Commissioners Court the sum of not exceeding One Hundred and Fifty Dollars (\$150) per month for traveling expenses and depreciation on his automobile while on official business within the county. Each member of such Commissioners Court shall pay all expenses in the operation of such automobile and keep same in repair free of any other charge to the county.

Sec. 5. The term "members of the Commissioners Court" when used herein means the County Commissioners and the County Judge.

Sec. 6. The provisions of this bill shall apply only to those counties not furnishing an automobile, truck, or by other means providing for the traveling expenses of its commissioners, while on official business within the county. Acts 1959, 56th Leg., p. 502, ch. 221.

Emergency. Effective May 22, 1959.

Section 7 of the Act of 1959, repealed  
art. 2350n.

## 2. POWERS AND DUTIES

### Art. 2351. 2241, 1537, 1514. Certain powers specified

County Building Authority Act, see art.  
2372<sub>o</sub>.

### Art. 2351a—6. Rural fire prevention districts

#### Limitation on indebtedness; tax levy

Sec. 12. No indebtedness shall be contracted in any one year in excess of funds then on hand or which may be satisfied out of current revenues for the year. The Board of Fire Commissioners shall annually levy and cause to be assessed and collected a tax upon all properties, real and personal, situated within the district and subject to district taxation, in an amount not to exceed three cents (3¢) on the One Hundred Dollars (\$100) valuation for the support of the district, and for the purposes authorized in this Act. Such tax levy shall be certified to the County Tax Assessor-Collector, who shall be the Assessor-Collector for the district. The values of property in the said district shall be the same values as are shown on the county tax rolls. As amended Acts 1959, 57th Leg., p. 31, ch. 19, § 1.

Emergency. Effective March 6, 1959.

#### Board of Fire Commissioners; organization, officers; bond of treasurer

Sec. 13. (1) The Board of Fire Commissioners, who shall be appointed by the Commissioners Court, shall be the governing body of the districts created under the provisions of this Act. They shall serve for a term of two years and until their successors are appointed and qualified.

(2) Upon the canvass of the election returns and entering of the order creating the district (provided in Section 9), the Commissioners Court shall name five commissioners to serve until January 1st of the next year. On that date, the court shall designate three of such commissioners to serve for a term of two years and two commissioners to serve for one year. Annually on January 1st thereafter, the court shall appoint a suc-

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

cessor to each commissioner whose term has expired. Vacancies on the board shall be filled by the Commissioners Court for their unexpired term.

Each of said fire commissioners shall take the official oath required of members of the Legislature of this state before entering upon his duties.

(3) Said fire commissioners shall choose from their number a president, vice-president, secretary and treasurer, who shall have and perform respectively, the duties usually incumbent upon their said offices. The office of secretary and treasurer may be vested in the same person.

The treasurer shall enter into and file with the county clerk his bond conditioned upon the faithful performance of the duties of his office. The sufficiency and amount of the bond shall be determined by the County Judge before it may be filed.

**Powers and duties of fire commissioners; meetings; records; quorum; compensation**

Sec. 14. The Board of Fire Commissioners shall administer all the affairs of said district in accordance with the provisions of this Act; shall hold regular monthly meetings, and such other meetings as deemed advisable; and shall keep proper minutes and records of all their acts and proceedings. A majority of said board shall constitute a quorum.

No fire commissioner shall receive any compensation for his services, but when on official business of the district may be compensated for their reasonable and necessary expenses. All moneys of the district shall be disbursed by check signed by the treasurer countersigned by the president, but no payments from tax moneys shall be paid unless a sworn itemized account covering the same has been presented to and approved by the board.

The board shall not later than February 1st of each year render in writing to the Commissioners Court of the county an accounting of its administration for the preceding calendar year and of the financial condition of the district.

The board shall further render such reports as may be required from time to time by the State Fire Marshall and other authorized party or agency.

No fire commissioner shall become interested in any contract or transaction in which said district is a party whereby he may receive any money consideration or other thing of value, other than as a resident or property owner of the district.

**Liberal construction of act; partial invalidity**

Sec. 15. The provisions of this Act and proceedings thereunder shall be liberally construed with a view to effect their objects. If any section or provision of this Act shall be adjudged to be invalid or unconstitutional, such adjudications shall not affect the validity of the Act as a whole, or any section, provision, or part thereof not adjudged to be invalid or unconstitutional.

**Validation of orders or proceedings of commissioner's court**

Sec. 16. The order of any Commissioners Court by which a rural fire prevention district has been or has sought to be created or established, wholly within one county, are hereby in all things validated, ratified and confirmed, and such district shall be hereafter deemed to have been established and in existence as of the date of the entry of the order by the



Commissioners Court which declared such rural fire prevention district to be in existence; provided, however, that this Act shall not apply to validate the organization or creation of such district unless each of the following steps have also been taken: (a) that the Commissioners Court has entered a finding that the court has investigated the benefits to be derived from the creation of the district and that all of the properties and persons within the territorial confines of the district will be benefited by the creation or existence of such district with the powers authorized under this law and under the provisions of Article III, Section 48-d, of the Constitution of Texas; and (b) the order creating the district has heretofore been filed in the deed records of the county, which order or supplement thereto shows the area of the district; and (c) the Commissioners Court has heretofore appointed fire commissioners for the governing of the rural fire prevention district; and (d) the proposition for the creation of the district, levying a tax, or both, has been submitted to the electorate and a majority of those participating in such election voted in favor of the district, the tax, or both, such election having been called by the Commissioners Court.

#### **Taxation; levy and collection**

Sec. 17. In those districts validated and declared to be and to have been established under the provisions of Section 16 of this Act, the district shall have the right to levy and collect the rate of tax of not to exceed the rate of tax voted at the election required under the provisions of Section 16; provided, however, that if the election sought to authorize more than a tax of three cents (3¢) per One Hundred Dollars (\$100.00) valuation contrary to the provisions of Article III, Section 48-d of the Constitution of Texas, the provisions of this section shall not be effective.

#### **Validation of governmental proceedings of districts**

Sec. 18. All governmental proceedings of the districts (which are validated by the provisions of Section 16 of this Act) are hereby in all things validated, ratified and confirmed. Acts 1957, 55th Leg., p. 130, ch. 57.

Emergency. Effective April 10, 1957.

#### **Art. 2367a. Counties and cities; identical bids; casting of lots**

Section 1. In all cases where bidding is required and where two or more responsible bidders submit the lowest and best bids in connection with a proposed county, city or district contract and these bids are identical in both amount and nature, the Commissioners Court of the county or the governing body of the city or district shall enter into a contract with only one of the responsible bidders and reject all other bids. The one bidder shall be selected by the casting of lots. The casting of lots shall be in such a manner as shall be prescribed by the County Judge or Mayor or governing body of the district, as the case may be, and shall be conducted in the presence of the governing body of the county, city or district at which time all qualified bidders or their legal representatives may also be present. Nothing herein shall prohibit the rejection of all bids by the awarding authority.

Sec. 2. The provisions of this Act shall be applicable to all counties, cities and districts in the State of Texas where bidding is required and contracts are to be let on the basis of the lowest and best bid, regardless of whether the bids are submitted pursuant to the provisions of a General Law, a Special Law, a city charter, or a city ordinance; provided, however, that the provisions of this Act shall not apply or be construed to apply to the bidding by any person, bank, banking corporation or associa-

tion for designation as depository of public funds of any county, city or district or to the letting of contracts therefor, nor shall such provisions apply to bids submitted to an independent school district by those persons or corporations seeking appointment as treasurer of the School Fund under Article 2832, Revised Civil Statutes of Texas, 1925, as last amended by Chapter 48, Acts of the 56th Legislature, Regular Session 1959. As amended Acts 1959, 56th Leg., 3rd C.S., p. 385, ch. 10, § 1.

Sec. 2. The provisions of this Act shall be applicable to all counties, cities and districts in the State of Texas where bidding is required, regardless of whether the bids are submitted pursuant to the provisions of a General Law, a Special Law, a City Charter, or a City Ordinance. Acts 1959, 56th Leg., p. 204, ch. 116.

Emergency. Effective April 29, 1959.

Amendment effective Aug. 12, 1959.

Section 3 of the Act of 1959 repealed all conflicting laws and parts of laws to the

extent of such conflict. Section 4 contained a severability clause.

### Art. 2368a—6. Validation of contracts, scrip and time warrants; refunding bonds; acts and proceedings; exceptions

Section 1. In every instance since the approval by the Governor of Texas on May 11, 1951, of Chapter 164, Acts of the 52nd Legislature, Regular Session, 1951 (Senate Bill No. 105, page 281),<sup>1</sup> where the Commissioners Court of a county or the governing body of a city (including home-rule cities) or town in this state has entered into contracts for the construction of public works or improvements, the purchase of land or interests in land, or for the purchase of materials, supplies, equipment, labor, supervision, or professional or personal services, and has heretofore adopted orders or ordinances to authorize the issuance of scrip or time warrants to pay or evidence the indebtedness of such county or city (including home-rule cities) or town for the cost of such public works or improvements, land, material, supplies, equipment, labor, supervision or professional or personal services, all such contracts, scrip and time warrants and the proceedings adopted by the Commissioners Court or governing body, as the case may be, relating thereto, are hereby in all things validated, ratified, confirmed and approved. All scrip warrants and time warrants heretofore issued by the Commissioners Court or governing body, as the case may be, in payment of work done by such county or city (including home-rule cities) or town and paid for by the day as the work progressed, and for materials and supplies purchased in connection with such work are hereby in all things validated, ratified, confirmed and approved. It is expressly provided, however, that this Act shall neither apply to nor validate, ratify or confirm any contract, scrip warrant, or time warrant executed or issued by any county with a population in excess of three hundred and fifty thousand (350,000), according to the last preceding Federal Census, or any contract, scrip warrant, or time warrant the validity of which is involved in litigation at the time this Act becomes effective.

<sup>1</sup> Article 2368a.

Sec. 2. All proceedings, governmental Acts, orders, ordinances, resolutions, and other instruments heretofore adopted or executed by a Commissioners Court or governing body of a city (including home-rule cities) or town, and of all officers and officials thereof, authorizing the issuance of or pertaining to time warrants or of bonds for the purpose of refunding time warrants issued by any county or city (including home-rule cities) or town, and all time warrants and all refunding bonds heretofore issued for such purpose, are hereby in all things validated, ratified, approved and confirmed. Such time warrants and refunding bonds now in process of

being issued and authorized by proceedings, ordinances and resolutions heretofore adopted may be issued irrespective of the fact that the Commissioners Court or governing body in giving the notice of intention to issue refunding bonds may not have in all respects complied with statutory provisions. It is expressly provided, however, that this Act shall neither apply to nor validate, ratify, or confirm any proceedings, governmental Acts, orders, resolutions or other instruments, or bonds executed, adopted, or issued by any county with a population in excess of three hundred and fifty thousand (350,000), according to the last preceding Federal Census, or any proceedings, governmental Acts, orders, ordinances, resolutions or other instruments, time warrants or bonds the validity of which is involved in litigation at the time this Act becomes effective. Acts 1959, 56th Leg., p. 700, ch. 321.

Emergency. Effective May 30, 1959.

Section 3 of the Act of 1959 contained a severability clause.

**Art. 2372d—2. Buildings and permanent improvements for annual exhibits and for coliseum and auditorium**

Section 1. The Commissioners Court of any county is hereby authorized to purchase, build, or construct buildings and other permanent improvements to be used for annual exhibits of horticultural and agricultural products, and/or livestock and mineral products of the county, and for a coliseum and auditorium. Such building or buildings and other permanent improvements may be located in the county at such place or places as the Commissioners Court may determine. Payment for such building or buildings and other permanent improvements shall be made from the Constitutional Permanent Improvement Fund. As amended Acts 1959, 56th Leg., 3rd C.S., p. 380, ch. 5, § 1.

Effective 90 days after Aug. 6, 1959, date of adjournment.

**Art. 2372h—1. Vacations, holidays and sick leave for employees of county officers and commissioners courts**

In each county of this State, each elected county officer or the Commissioners Court, as the case may be, shall have authority to provide for vacations, holidays fixed by State law, and sick leaves, without deduction or loss of pay, and to provide for deductions for absences, for the employees working under the elected county officer or his appointees or under the Commissioners Court or its appointees or under a County Commissioner or his appointees, regardless of whether the employee is paid on a fixed salary basis or on the basis of an hourly or daily wage. Nothing in this Act shall affect existing laws authorizing or regulating vacations, holidays, sick leave and absences for county employees, it being the intention of this Act only to provide such authority with respect to the employees covered by this Act in counties where it does not now exist. Acts 1959, 56th Leg., p. 544, ch. 243, § 1.

Effective 90 days after May 12, 1959, date of adjournment.

Payment of expenses of state employees injured or killed in performance of governmental functions, see art. 6822a.

**Art. 2372h—2. Hospitalization insurance for county officials and employees**

The Commissioners Court of any county may adopt any insurance plan, as they deem necessary, to provide hospitalization insurance to any county

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

official, deputy, assistant, and/or any other county employee. Acts 1959, 56th Leg., p. 585, ch. 268, § 1.

Emergency. Effective May 26, 1959.

Group insurance for public employees, see V.A.T.S. Insurance Code, art. 3.51.

Title of Act:

An Act relating to the authority of the Commissioners Court of each County to

adopt a plan to provide hospitalization insurance to any or all county officials and employees; and declaring an emergency. Acts 1959, 56th Leg., p. 585, ch. 268.

Art. 2372j. County office building and other buildings; certain counties of 90,000 to 225,000

County Building Authority Act; see art. 2372o.

Art. 2372o. County Building Authority Act

#### Application of act

Section 1. This Act shall be applicable only to counties having a population in excess of 600,000 according to the last preceding Federal Census and which own and use, in conjunction with other structures, a courthouse which is more than thirty (30) years old or has not been completely renovated or remodeled within a thirty (30) year period. County Building Authorities without taxing power may be created as hereinafter provided. This law shall be known as the "County Building Authority Act."

#### Definitions

Sec. 2. As used in this law: (a) "County" means any county to which this Act is applicable;

(b) "Authority" means a County Building Authority created under this Act;

(c) "Board" or "Board of Directors" means the board of directors of the Authority;

(d) "Project" means the building and property to be constructed or acquired by the Authority;

(e) "Bond Resolution" means the resolution of the Board of Directors authorizing the issuance of revenue bonds;

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

(g) "Trustee" means the trustee under the Trust Indenture.

#### County building study committee; powers; payment of costs

Sec. 3. When the Commissioners Court of any county coming under the provisions of this Act shall find that it is to the best interest of the county and its inhabitants it shall by order create a County Building Study Committee composed of five (5) members, one (1) to be appointed by each County Commissioner and one (1) by the County Judge. The Study Committee shall have the power to study the needs of the county for a new or expanded county building and the possibility of incorporating therewith devices and characteristics designed to afford protection of life and property in modern warfare, make preliminary plans and surveys with reference to requirements, costs and feasibility of the project and to make recommendations to the Commissioners Court. The county may pay the cost of such study, not to exceed Twenty-five Thousand Dollars (\$25,000.).

**Election on construction of county building and issuance of bonds; ballots**

Sec. 4. The Commissioners Court, after reviewing and considering the recommendations of the Study Committee, may call an election of the qualified voters of the county on the question of construction of a County Building and the issuance of bonds. At such election the following question shall be submitted to the voters:

FOR the constructing, acquiring, improving, equipping, furnishing a County Building and to issue negotiable revenue bonds to provide funds for this purpose."

AGAINST constructing, acquiring, improving, equipping, furnishing a County Building and to issue negotiable revenue bonds to provide funds for any of its purposes."

If a majority of the qualified voters of the county vote affirmatively on the above question the Authority shall come into existence and the following Sections of this Act shall apply.

**Board of directors; membership; terms; vacancies; appointments; qualifications; compensation**

Sec. 5. The Authority shall be governed by a board of five (5) directors; each County Commissioner shall appoint one (1) director and the County Judge shall appoint one (1) director. Each director shall serve for a term of not more than two (2) years ending on December 31 not more than two (2) years after his term begins. The directors may provide for overlapping terms, in which event, the directors who are to serve until the following December 31, and those who are to serve until December 31 of the following year shall be determined by lot. Upon the death, resignation, or expiration of the term of any director, a new director to succeed said director, shall be appointed by the person then holding the office of County Judge or County Commissioner, as the case may be, who originally appointed such retiring director; and further, no provisions may hereafter be made in the bylaws of the Authority herein created, to provide for any other means of filling vacancies on the Board of Directors, as if and when they may occur. No officer or employee of any such county shall be eligible for appointment as a director. Directors shall not receive compensation for services but shall be entitled to reimbursement of their expenses incurred in performing such service.

**Officers; quorum; appointment of managers of properties; comptroller; duties**

Sec. 6. (a) The Board of Directors shall elect from among its members a president and a vice-president, and shall elect a secretary and a treasurer who may or may not be directors, and may elect such other officers as may be authorized by Authority's bylaws. The offices of secretary and treasurer may be combined. The president shall have the same right to vote on all matters as other members of the Board. A majority of the members of the Board shall constitute a quorum and when a quorum is present action may be taken by a majority vote of directors present. The Board shall employ a manager or executive director of the properties and such other employees, experts and agents as it may see fit, but it may delegate to the manager the power to employ and discharge employees. The Board may employ legal counsel.

(b) The County Auditor shall appoint a Comptroller for the Authority, subject to the approval of the Board of Directors and the Commissioners Court. The Comptroller shall work under the direction of the County

Auditor and shall institute such budgetary, purchasing and fiscal procedures as conform to accepted business and accounting practices. The Comptroller shall make quarterly reports to the Commissioners Court. His employment may be terminated by the County Auditor and a majority vote of the Board of Directors, and a majority vote of the Commissioners Court. The Comptroller's salary shall be fixed by the County Auditor and approved by the Board of Directors and by the Commissioners Court, and his salary shall be paid by the Authority.

**Power to construct, enlarge and furnish courthouse; bids**

Sec. 7. The Authority shall have the power, subject to the approval of the Commissioners Court, to construct, enlarge, furnish and equip a building to be used principally as a county courthouse. The Board of Directors shall comply with Chapter 163, Acts of the 42nd Legislature (Vernon's Annotated Civil Statutes Article 2368a), as amended, and Sections 2a and 2b thereof with reference to any construction contract or contract for purchase of equipment and material calling for or requiring the expenditure or payment of Two Thousand Dollars (\$2,000.) or more.

**Purpose; cooperation with Civil Defense Administrator; participation in federal or state assistance**

Sec. 8. The Authority is created primarily for the purpose of constructing, acquiring, improving, equipping, furnishing, maintaining and operating a County Building adequate to meet the needs and requirements of such county, and may incorporate shelter protection as a part of the underground facilities to be constructed. In this connection the Authority is authorized to cooperate with the Civil Defense Administrator operating under the Acts of Congress and with the Civil Defense Officers operating under state laws and may make all necessary contracts which would entitle the Authority to participate in Federal or State Assistance in constructing and operating such shelter protection facilities. In making the plans for any such building the Authority may take into consideration the anticipated population and economic growth of the county and its consequent increasing demands for space for housing offices, courts and other activities of the county.

**General powers of authority**

Sec. 9. The Authority is hereby granted and shall have and may exercise all powers necessary or convenient for the carrying out of the purposes set forth in Section 6 above, including but without limiting the generality of the grant of powers, the following rights and powers:

(a) To sue and be sued, implead and be impleaded, to complain and defend in all courts;

(b) To adopt, use and alter at will a corporate seal;

(c) To acquire, purchase, hold and use the land necessary for carrying out the purpose of the Authority, including the power, but without limitation as to the generality of the power hereby granted, to lease as lessee from such county any land or any interest therein for a term not to exceed ninety-nine (99) years, at a nominal rental, or at such annual rental as may be determined by contract between the county and the Authority; to lease as lessor to the county any property, real, personal or mixed, or any interest therein for a term of not exceeding ninety-nine (99) years, at a nominal rental or at such annual rental as may be determined by contract between the county and Authority; to lease as lessor to other persons any property, real, personal or mixed, or any

interest therein or any space therein, for a term of not exceeding forty (40) years, at such annual rental as may be determined by contract between the Authority and such person or persons, but with the proviso that upon such notice as may be specified therein the possession of such property will be surrendered by such person or persons to the Authority in the event and to the extent that it shall then be required for use by the county, provided that the obligations of the Authority under its bond resolution and indenture are not to be impaired thereby;

(d) To make bylaws for the management and regulation of its affairs;

(e) To fix, alter, charge and collect rates, rentals, and other charges for the use of the facilities of, or for the services rendered by the Authority or the Project, which must yield an aggregate income adequate to provide for the payment of the expenses of the Authority, maintenance and operation of the Project and to pay the principal of and interest on the obligations of the Authority, including the amounts necessary to establish and maintain such reserve funds as are required under the resolution authorizing the issuance of Authority's obligations and under the indenture securing such obligations;

(f) To make contracts of all kinds and to execute all instruments necessary or convenient for the carrying on of its business;

(g) Without limitation of the foregoing to borrow money and accept grants from, and to enter into contracts, leases or other transactions with any Federal Agencies;

(h) To have and exercise the power of eminent domain to the same extent and to be exercised in the same manner and under the same laws that are applicable to counties under the laws of the State of Texas for the purpose of acquiring property needed for any purpose authorized by this law;

(i) Prior to the beginning of each fiscal year the Comptroller under the direction of the Board of Directors shall prepare the budget for the ensuing fiscal year and submit it to the Commissioners Court. The Commissioners Court is authorized to approve or revise the budget within fifteen (15) days after it is so submitted;

(j) To do all acts and things necessary or convenient to carry out the powers granted to it by this Act or any other Acts.

#### **Authority of counties; accomplishment of objectives of act**

Sec. 10. A county, acting through its Commissioners Court is authorized to do all things necessary or convenient to permit the accomplishment of the objectives of this Act including, but without limitation as to the generality of such authorization, the following:

(a) The acquisition of land and the conveyance of such land and additional land owned by the county, to the Authority, which in the opinion of such court is needed for the Project, such conveyance to be either in the form of a deed or a lease, and upon such consideration as may be deemed reasonable by such court, after taking into consideration the fact that the Project is for the primary benefit of the county;

(b) To enter into such contracts of lease, as lessee, with the Authority as lessor, as may be necessary or convenient under this Act, to the extent that such contracts are considered by the court to be in the best interest of the county and in such contract of lease the county is authorized to obligate itself to pay to the Authority, at a bank or be designated by the Authority, an annual rental fixed or determined in the manner provided in such lease and to levy a tax sufficient to pay such rental as it becomes due.

**Issuance of negotiable revenue bonds**

Sec. 11. The Authority may issue negotiable revenue bonds to provide funds for any of its purposes. Such bonds shall be payable from and secured by a pledge of the net revenues to be derived from the operation of its properties and any other revenues resulting from the ownership thereof. The bonds may be additionally secured by a mortgage or deed of trust on real and personal property of the Authority.

**Bond issue election; notice; series; maturity date; interest cost; recall prior to maturity**

Sec. 12. No bonds shall be issued unless authorized by an election held throughout the Authority for that purpose. Such election shall be called by resolution of the Board of Directors. Said election shall be called and held and notice thereof published in the manner provided by Chapter 1 of Title 22, Revised Civil Statutes of 1925, as amended. The bonds shall be authorized by resolution adopted by a majority vote of a quorum of the Board of Directors, and shall be signed by the president or vice-president and countersigned by the secretary, or either or both of their facsimile signatures may be printed thereon. The seal of the Authority shall be impressed or printed thereon. The bonds shall mature serially or otherwise in not to exceed (40) years and may be sold at a price and under terms determined by the Board of Directors to be the most advantageous reasonably obtainable, provided that the interest cost to the Authority, including the discount, if any, calculated by use of standard bond interest tables currently in use by insurance companies and investment houses does not exceed six percent (6%) per annum, and within the discretion of the Board, may be made callable prior to maturity at such times and prices as may be prescribed in the resolution authorizing the bonds, and may be made registrable as to principal or as to both principal and interest.

**Bonds constituting junior lien on net revenues; issuance; bond resolution**

Sec. 13. Bonds constituting a junior lien on the net revenues or properties may be issued unless prohibited by the Bond Resolution or Trust Indenture. Parity bonds may be issued under condition specified in the Bond Resolution or Trust Indenture.

**Money for payment of initial interest and operating expenses**

Sec. 14. Money for the payment of not more than two (2) years interest on the bonds and an amount estimated by the Board to be required for operating expenses during the first year of operation may be set aside for those purposes out of the proceeds from the sale of the bonds.

**Refunding bonds; exchange by comptroller**

Sec. 15. Bonds may be issued for the purpose of refunding outstanding bonds in the manner provided in this Act for other bonds except that no election shall be required, and may be exchanged by the Comptroller of Public Accounts of the State of Texas or sold and the proceeds applied in accordance with the procedure prescribed in Chapter 503, Acts of the 54th Legislature.



**Examination of bonds by attorney general; lease contracts;  
approval; registration**

Sec. 16. After any bonds (including refunding bonds) are authorized by the Authority such bonds and the record relating to their issuance shall be submitted to the Attorney General for his examination as to the validity thereof. Where such bonds recite that they are secured by a pledge of the proceeds of a lease contract theretofore made between the Authority and the county, or other governmental agency, a copy of such contract and the proceedings of the county or other governmental agency, authorizing such lease contract shall also be submitted to the Attorney General. It shall be the duty of the Attorney General to approve the bonds, and the lease contract, if any, if he finds them to be valid. If he shall approve the bonds and such lease contract the bonds then shall be registered by the Comptroller of Public Accounts. Thereafter, the bonds, and the lease contract, if any, shall be valid and binding and shall be incontestable for any cause. The creation of the Authority, the bonds, the provision made for the payment and security thereof, and the lease contract if one is made, may also be adjudicated as to validity in the manner provided by Senate Bill No. 349, Acts of the Regular Session of the 56th Legislature.

**Legal and authorized investments; eligibility to secure  
deposit of public funds**

Sec. 17. All bonds of the Authority shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, guardians, and the sinking funds of cities, towns, villages, counties, school districts, or other political subdivisions of the State of Texas. Such bonds shall be eligible to secure the deposit of any and all public funds of the State of Texas, and any and all public funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas; and such bonds shall be lawful and sufficient security for said deposits to the extent of their value, when accompanied by all unmatured coupons appurtenant thereto.

**Operation of properties without private profit; payment of expenses;  
sinking fund; bond reserve fund**

Sec. 18. The properties shall be operated without the intervention of private profit for the use and benefit of the public. But it shall be the duty of the Board of Directors to charge sufficient rentals and charges and to utilize other sources of its revenues so that revenues will be produced sufficient to pay all expenses in connection with the ownership, operation and upkeep of the property, to pay the interest on the bonds as it becomes due, to create a sinking fund to pay the bonds as they become due, and to create and maintain a bond reserve fund and other funds as provided in the Bond Resolution or Trust Indenture.

**Depository**

Sec. 19. The Authority may select a depository or depositories according to the procedures provided by law for the selection of county depositories or it may award its depository contract to the same depository or depositories selected by the county and on the same terms.

**Use of property for benefit of public; tax exemption**

Sec. 20. The property owned by Authority will be held for governmental and public purposes only and will be devoted exclusively to the use and benefit of the public, and it shall be exempt from taxation of every character.

**Investment of funds**

Sec. 21. The law as to the security for, and the investment of funds, applicable to counties shall control, insofar as applicable the investment of funds belonging to the Authority. The Bond Resolution or the Indenture or both may further restrict the making of such investments. In addition to other powers, the Authority shall have the right to invest the proceeds of its bonds, until such money is needed, in the direct obligations of or obligations unconditionally guaranteed by the United States Government, to the extent authorized in the Bond Resolution or Indenture or in both.

**Partial invalidity**

Sec. 22. 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 provision to other persons or circumstances, shall not be affected thereby.

**Limiting rights and powers of commissioners court**

Sec. 23. No power or authority herein delegated, given, or granted to the Authority authorized to be created by this Act, shall in any manner, alter or limit the rights and powers of the County Commissioners Court, to continue to provide for itself, and the public to be served, such buildings and other facilities which, in their judgment are necessary for the convenience of the people in populated areas.

**Payment of indebtedness; conveyance of property to county; dissolution**

Sec. 24. After payment of all indebtedness incurred by the Authority, the Authority shall convey all of its properties and assets to the county without cost to the county, and the Authority shall be dissolved upon the making of such conveyance. Acts 1959, 56th Leg., 2nd C.S., p. 126, ch. 25.

Effective 90 days after July 16, 1959, date of adjournment.

Branch office buildings in counties of over 110,000 having city of over 10,000 outside county seat, see art. 1605a—1.

Construction and repair of courthouses, powers of commissioners court, see art. 2351.

County office buildings in certain counties, purchase or construction, see art. 2372j.

County seats, providing buildings and courthouses, see arts. 1603, 1604.

Court buildings and county office buildings, construction, improving and equipping, see art. 2370b.

Location of county offices, see art. 1605.

Payment of debt before removal of county seat, see art. 1601.

## TITLE 46—CREDIT ORGANIZATIONS

## Art. 2465. Supervision; examinations and examiners; fees: expenses

Such credit union shall maintain such books and records as the Banking Commissioner may deem necessary. The Banking Commissioner shall cause each credit union to be examined at least once yearly, such examination to be made by:

(1) One or more credit union examiners who shall be appointed by the Banking Commissioner and who shall receive, in addition to the salary fixed and determined by the Finance Commission, all necessary traveling expenses, a sworn itemized account of which shall be rendered monthly by each examiner and approved by the Commissioner; or by

(2) The Deputy Commissioner, departmental examiner, any bank examiner, assistant bank examiner, building and loan supervisor, building and loan examiner, or loan and brokerage-credit union supervisor.

Each credit union examined shall pay an examination fee fixed by the Banking Commissioner not to exceed Fifty-Five Dollars (\$55.00) per day per person engaged in each examination or a total fee of Ten Dollars (\$10.00) per One Thousand Dollars (\$1,000.00) of assets or fraction thereof as reflected by the examination, whichever is lower, with a minimum of Ten Dollars (\$10.00). Such fees, together with all other fees, penalties or revenues collected by the Banking Department, shall be retained by said Department and shall be expended only for the expenses of said Department. As amended Acts 1951, 52nd Leg., p. 233, ch. 139, § 5; Acts 1953, 53rd Leg., p. 477, ch. 166, § 1; Acts 1959, 56th Leg., p. 808, ch. 365, § 1.

Emergency. Effective June 1, 1959.

Section 2 of the amendatory Act of 1959 repealed all conflicting laws and parts of laws to the extent of such conflict, section 3 contained a severability clause.

Section 5 of the Act of 1953 provided that partial invalidity should not invalidate, impair or affect the remaining portions of the act.

## TITLE 47—DEPOSITORIES

## CHAPTER TWO—COUNTY DEPOSITORIES

Art. 2558a. Depositories for trust funds in hands of county and district clerks

**Placing trust funds on time deposit; withdrawals; interest**

Sec. 4a. The Commissioners Court of each county, acting by and through the County Auditor, or if there is no County Auditor then the County Treasurer, of such county, is authorized to place on time deposit with the depository bank for trust funds in the possession of County and District Clerks of such County, that portion of the trust funds account estimated by the County Auditor or County Treasurer, as the case may be, as not required immediately to pay out all amounts in accordance with proper orders of the Judge of the Court in which funds have been deposited. If at any time the funds so placed on time deposit are required before maturity, they shall be made available by the depository bank but the depository bank shall not be liable for interest earned on such amount withdrawn from time deposit. The Commissioners Court is authorized and directed to receive all interest so earned on time deposit of such trust funds and to place all such interest into the General Fund of the County as an offset to the expenses of handling such trust funds for the benefit of litigants. Added Acts 1959, 56th Leg., p. 586, ch. 270, § 1.

Emergency. Effective May 26, 1959.

TITLE 49—EDUCATION—PUBLIC

Chap.	Art.
4B. <b>Midwestern University at Wichita Falls [New]</b> .....	2623c—1

CHAPTER ONE—UNIVERSITY OF TEXAS

Art.	Art.
2589f. Control and management of Texas Memorial Museum [New].	2603i. Improvement of facilities of Institute of Marine Science, Port Aransas [New].
2603f—1. Texas State Cancer Hospital, M. D. Anderson Hospital for Cancer Research, Dental College of University of Texas, Preceptorial Training Center, change of name [New].	2606c. South Texas Medical School [New].

Art. 2589f. Control and management of Texas Memorial Museum

Section 1. From and after the effective date of this Act the control and management of the Texas Memorial Museum and all rights, privileges, powers, and duties incident thereto shall be transferred to, vested in, and exercised by the Board of Regents of The University of Texas.

Sec. 2. The Texas Memorial Museum shall continue to be used as a museum and shall be an integral part of The University of Texas, Austin, Texas. Acts 1959, 56th Leg., p. 109, ch. 58.

Effective 90 days after May 12, 1959, date of adjournment.

Section 3 of the Act of 1959 repealed all conflicting laws and parts of laws to the extent of the conflict only.

Title of Act:

An Act to transfer the control and management of the Texas Memorial Museum to the Board of Regents of The University of Texas; repealing all laws or parts of laws in conflict; and declaring an emergency. Acts 1959, 56th Leg., p. 109, ch. 58.

Art. 2603e. State Cancer Hospital; Division of Cancer Research

Change of name of Texas State Cancer Hospital and M. D. Anderson Hospital for Cancer Research to The University of Tex-

as M. D. Anderson Hospital and Tumor Institute, see art. 2603f—1.

Art. 2603f. Sites for Cancer Research Hospital and Dental College; sale of other property; School of Public Health; Preceptorial Training Center; gifts

Change of name:

Dental College of the University of Texas to The University of Texas Dental Branch at Houston, see art. 2603f—1.

Preceptorial Training Center to The University of Texas Postgraduate School of Medicine, see art. 2603f—1.

Eminent domain by certain nonprofit charitable organizations, see art. 3183b—1.

Art. 2603f—1. Texas State Cancer Hospital, M. D. Anderson Hospital for Cancer Research, Dental College of University of Texas, Preceptorial Training Center, change of name

Section 1. The name of the Texas State Cancer Hospital created by Acts, 47th Legislature, 1941, page 878, Chapter 548 (Art. 2603e, V.C.S.), and M. D. Anderson Hospital for Cancer Research created by Acts, 50th Legislature, 1947, page 509, Chapter 300 (Art. 2603f, V.C.S.); the Dental College of The University of Texas created by Acts, 50th Legisla-

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ture, 1947, page 509, Chapter 300 (Art. 2603f, V.C.S.); and the Preceptorial Training Center created by Acts, 50th Legislature, 1947, page 509, Chapter 300 (Art. 2603f, V.C.S.), respectively, are hereby changed to "The University of Texas M. D. Anderson Hospital and Tumor Institute," "The University of Texas Dental Branch at Houston," and "The University of Texas Postgraduate School of Medicine."

Sec. 2. All laws heretofore or hereafter enacted by the Legislature applicable or relating to these institutions shall hereafter be applicable and relate to "The University of Texas M. D. Anderson Hospital and Tumor Institute," "The University of Texas Dental Branch at Houston," and "The University of Texas Postgraduate School of Medicine."

Sec. 3. All appropriations heretofore made and now effective and all appropriations hereafter made by the Legislature for the use and benefit of the Texas State Cancer Hospital or M. D. Anderson Hospital for Cancer Research shall be available for the use and benefit of "The University of Texas M. D. Anderson Hospital and Tumor Institute." All appropriations heretofore made and now effective and all appropriations hereafter made by the Legislature for the use and benefit of the Dental College of The University of Texas shall be available for the use and benefit of "The University of Texas Dental Branch at Houston." All appropriations heretofore made and now effective and all appropriations hereafter made by the Legislature for the use and benefit of the Preceptorial Training Center shall be available for the use and benefit of "The University of Texas Postgraduate School of Medicine."

Sec. 4. All contracts, bonds, notes, or other debentures heretofore issued are hereby ratified, confirmed, and validated for and on behalf of "The University of Texas M. D. Anderson Hospital and Tumor Institute," "The University of Texas Dental Branch at Houston," and "The University of Texas Postgraduate School of Medicine." Acts 1959, 56th Leg., p. 212, ch. 122.

Emergency. Effective April 29, 1959.

#### Art. 2603i. Improvement of facilities of Institute of Marine Science, Port Aransas

Section 1. The Board of Regents of The University of Texas is hereby authorized to improve the facilities of the Institute of Marine Science, Port Aransas, Texas, an organized research unit of the Main University, Austin, Texas, by constructing and equipping a Research Building on the premises now occupied by the Institute, and by acquiring by purchase, gift, or otherwise any part or all of a strip of land 100 feet by 350 feet adjacent to or near the premises of the Institute of Marine Science, Port Aransas, Texas, wherever the same is accessible to water for the purpose of dredging and maintaining dock facilities for boats owned by The University of Texas.

Sec. 2. The construction and equipping of the Research Building and the acquisition of a site for dock facilities may be financed wholly or in part from any of the following sources: gifts and grants, federal funds, or the Available University Fund.

Sec. 3. The title to the land acquired shall be taken in the name of the Board of Regents of The University of Texas and shall be subject to the control and management of the Board of Regents in the same manner and to the extent that the lands now held by The University of Texas, Austin, Texas, are held and controlled; provided, however, that if said property is donated to The University of Texas, the deed may provide

for reversion of the title to the donor if the property is not used and maintained for the purpose of providing docking facilities for university boats. Acts 1959, 56th Leg., p. 110, ch. 59.

Effective 90 days after May 12, 1959, date of adjournment.

#### Art. 2606b. Medical department or branch

Eminent domain by certain nonprofit charitable corporations, see art. 3183b-1.

#### Art. 2606c. South Texas Medical School

##### Establishment and location

Section 1. The Board of Regents of The University of Texas is hereby authorized and directed to establish a Medical Department or Branch of The University of Texas within the County of Bexar, State of Texas, to be known as The South Texas Medical School. Provided, however, that the Board of Regents shall take no action pursuant to the terms of this Act, excepting the planning hereinafter provided for, and the acceptance of gifts, grants or donations, until an appropriation has been made for the purpose of carrying out the provisions of this Act by the Legislature of the State of Texas; and furthermore provided that the Board of Regents shall take no action pursuant to the terms of this Act until the City or County in which it be located provides a teaching hospital deemed suitable and sufficient by the Board. Said teaching hospital to be located within one mile from the campus of said school and provided and maintained without any cost to the State of Texas.

##### Courses; rules and regulations

Sec. 2. The Board of Regents of The University of Texas shall have the authority to prescribe courses leading to customary degrees, and to make such other rules and regulations for the operation, control and management of the new Medical Branch or Department of The University of Texas as may be necessary for its conduct as a medical college of the first class.

##### Grants or gifts

Sec. 3. The Board of Regents of The University of Texas is hereby authorized to accept and administer, upon terms and conditions satisfactory to it, grants or gifts of property or money which may be tendered to it in aid of the planning necessary for the conduct and operation of said new Medical Branch or Department of The University of Texas; in aid of the establishment of said new Medical Branch or Department of The University of Texas; or in aid of research and teaching at said new Medical Branch or Department of The University of Texas. The Board of Regents is further authorized and empowered to accept from the Federal Government, any foundation, trust fund, corporation, or individual, donations, gifts and grants, including real estate, buildings, libraries, laboratories, apparatus, equipment, records, or money for the exclusive use and benefit of the said new Medical Branch or Department of The University of Texas. Before acceptance of any such gifts, grants or donations of real property, the Board of Regents shall secure the opinion of the Attorney General of the State of Texas as to the title of any such real property to be conveyed by the Board of Regents.

**Conduct and operation; entering classes**

Sec. 4. The Board of Regents of The University of Texas shall proceed with the planning necessary for the conduct and operation of a first class medical college with entering classes of a maximum of one hundred (100) students. The entering classes of a maximum of one hundred (100) students as provided in this section shall be in addition to the total number of students in entering classes in all of the present Medical Branches of The University of Texas. Acts 1959, 56th Leg., p. 219, ch. 129, § 1.

Effective 90 days after May 12, 1959, date of adjournment.

Section 5 of the Act of 1959 contained a severability clause.

**CHAPTER TWO—AGRICULTURAL AND MECHANICAL COLLEGE****Art. 2614. 2677, 3872 Perpetual fund**

The money arising from the sale of the one hundred eighty thousand acres of land donated to this state by the United States under the provisions of an Act of Congress passed on the second day of July, 1862, and an amended Act of Congress of July 23, 1866, shall constitute a perpetual fund, under the conditions and restrictions imposed by the above recited Acts, for the benefit of the Agricultural and Mechanical College of Texas; and the investment of the same, heretofore made in the bonds of the state, when said bonds are redeemed, may be made by the Board of Directors of said College in United States Government Securities in furtherance of the interests of said College and in accordance with the terms on which it was received. As amended Acts 1959, 56th Leg., 3rd C.S., p. 383, ch. 8, § 1.

Emergency. Effective Aug. 6, 1959.

**Art. 2615b. Nautical school authorized; management by Board of Directors of Agricultural and Mechanical College**

Sec. 4A. Repealed. Acts 1959, 56th Leg., p. 219, ch. 128, § 1.

Emergency. Effective April 29, 1959.

**CHAPTER THREE—TARLETON STATE COLLEGE****Art. 2618. Courses of study; operative date**

Said college shall rank as a four-year, coeducational, senior college and may offer the usual college courses in the arts and the sciences and in home economics as given in standard senior colleges of the first class, and shall be empowered to confer appropriate degrees as determined by the Board of Directors. The instruction offered in the two-year courses at the effective date of this Act may be continued. As amended Acts 1953, 53rd Leg., p. 749, ch. 296, § 1; Acts 1959, 56th Leg., p. 154, ch. 92, § 1.

Effective 90 days after May 12, 1959, date of adjournment.

Operative date. Section 2 of Acts 1959, 56th Leg., p. 154, ch. 92 provided: "This

Act shall become operative on September 1, 1961, for the third year of senior college work and September 1, 1962, for the fourth year of senior college work."



## CHAPTER FOUR—ARLINGTON STATE COLLEGE

Art.

2621a. Status as fully State-supported co-educational senior college; courses of study [New].

Art. 2621a. Status as fully State-supported co-educational senior college; courses of study

Section 1. Arlington State College is hereby constituted a fully State-supported co-educational senior college.

Sec. 2. The bachelors-level degree programs and departments are limited to the following and to such additional programs and departments as the Texas Commission on Higher Education may approve from time to time, on its own initiative or upon recommendation of the Board of Directors of the Texas Agricultural and Mechanical College System: (1) Engineering, to the extent of programs and departments in Aeronautical, Civil, Electrical, Industrial, and Mechanical Engineering; (2) Liberal Arts, to the extent of programs and departments in Economics, English, Modern Foreign Languages, Mathematics, History, Sociology, and Psychology; (3) Science, to the extent of programs and departments in Biology, Chemistry, Geology, and Physics; and (4) Business Administration, to the extent of a program and department offering a single undifferentiated major in Business Administration.

Sec. 3. Courses may be offered in (1) Fine Arts, including Art, Speech and Music, but not on a degree-program level; and (2) Physical Education for men and for women but not on a degree-program level.

Sec. 4. The instruction offered in the vocational certificate programs at the effective date of this Act may be continued.

Sec. 5. This Act shall take effect and become operative on September 1, 1959, for the third year of senior college courses and on September 1, 1960, for the fourth year of senior college courses, to the extent that staff and facilities are available for such authorized programs and departments.

Sec. 6. This Act is cumulative of existing statutes relating to Arlington State College except where same may be in conflict herewith, in which event, any conflicting statute is hereby repealed to the extent of such conflict. Acts 1959, 56th Leg., p. 246, ch. 141.

Effective 90 days after May 12, 1959, date of adjournment.

Title of Act:

An Act constituting Arlington State College a fully State-supported co-educational senior college; prescribing and limiting

courses of study; providing an effective date; declaring this Act to be cumulative of existing statutes relating to Arlington State College; repealing all laws in conflict herewith; and declaring an emergency. Acts 1959, 56th Leg., p. 246, ch. 141.

**CHAPTER FOUR B—MIDWESTERN UNIVERSITY AT  
WICHITA FALLS [NEW]**

Art.

2623c—1. Creation of University.

2623c—2. Organization, control, and management.

2623c—3. The work of the University, courses, and degrees.

2623c—4. Additional courses.

Art.

2623c—5. Transfer of property.

2623c—6. Donations, gifts, and endowments.

2623c—7. Acquisition of corporeal properties.

**Art. 2623c—1. Creation of University**

There is hereby established in the City of Wichita Falls, Wichita County, Texas, a co-educational institution of higher learning for the youth of the state, which shall be known as *Midwestern University*, to be conducted, operated, and maintained under a Board of Regents, as herein provided. Acts 1959, 56th Leg., p. 253, ch. 147, § 1.

Effective 90 days after May 12, 1959, date of adjournment.

Section 8 of the Act of 1959 repealed all conflicting laws and parts of laws. Section 9 contained a severability clause.

**Art. 2623c—2. Organization, control, and management**

The organization, control, and management of such University shall be vested in a Board of nine Regents, who shall be appointed by the Governor of Texas and confirmed by the Senate. The term of office of each Regent shall be six years, provided that in making the first appointment the Governor shall appoint three members for six years, three members for four years, and three members for two years. Any vacancy that occurs on the Board shall be filled for the unexpired term by appointment of the Governor. Each member of the Board shall take the constitutional oath of office. The said Board of Regents shall meet for the first time, after the passage of this Act at the time and place designated by the Governor, or as soon after their appointment as possible. They shall organize by electing a Chairman of said Board of Regents and such other officers as they desire. They shall select a President for the University as soon as possible after the organization of the Board of Regents. They shall fix his term of office, name his salary, and define his duties. The President of the University shall be the executive officer for the Board of Regents and shall work under its directions. He shall recommend the plan of organization and the appointment of employees of said University, and shall have the cooperation of said Board of Regents and shall be responsible to said Board for the general management and success of said University. The Board of Regents shall receive only reimbursement for actual cost of attendance at Board meetings. Acts 1959, 56th Leg., p. 253, ch. 147, § 2.

**Art. 2623c—3. The work of the University, courses, and degrees**

*Midwestern University* shall offer courses of higher learning in the arts and sciences, establishing a standard four year course for said University. Such courses of study shall be offered as are found in the Senior Universities of the first rank; provided that any Bachelors Degree shall be based on four years of college work, and any higher degree may be offered with appropriate courses, when in the judgment of the Board of Regents the educational welfare of the people served by the University demands such advanced courses and degrees, and provided further, that all work done and all courses, certificates, and diplomas given to students shall conform to standard college requirements, as proposed by the ac-

crediting agencies of the South. Short courses, terminal courses, and special courses of practical value to our people shall be given from time to time by Midwestern University as the Board of Regents shall order and direct. Acts 1959, 56th Leg., p. 253, ch. 147, § 3.

#### Art. 2623c—4. Additional courses

The specification of courses of study written in this Act shall not prohibit the Board of Regents from adding other courses, subjects, or groups of subjects necessary to enable Midwestern University to perform its functions as a higher college of the arts and sciences in the most practicable and efficient way. The Board of Regents is required and directed to build and operate a state college of the first rank that shall compare favorably with the other splendid colleges in Texas in the preparation of its youth for the varied interests and industries in the section in which Midwestern University is located, and this college shall be equipped adequately to do its work as well as other state colleges. Provided, however, that any additional courses of study not offered at Midwestern University in the 12-month period prior to the effective date of this Act shall be submitted to and approved by the Commission on Higher Education or its successors before being offered at Midwestern University as herein created. Acts 1959, 56th Leg., p. 253, ch. 147, § 4.

#### Art. 2623c—5. Transfer of property

The Midwestern University and Hardin Junior College located at Wichita Falls, in Wichita County, Texas, consists of a campus of some one hundred acres, with adjacent acreage and lands, including dormitories, class rooms, laboratories, administration buildings, of a total estimated asset of Five Million Dollars; the legal description being as follows:

First Tract: The 40 acre tract out of Blocks 9, 10, 11, 12, 14, 15, 16, and 17 of Highland Addition (acreage subdivision) out of the Cyrus Eakman Survey No. 2, Abstract No. 450, Wichita County, Texas, as particularly described by metes and bounds as follows:

Beginning at a stake set in the East line of the I. C. Haynes Survey, Abstract 450, said point being located 2474.7 feet South of the intersection of the said line with the North curb line of Cambridge St., and 76.5 feet South of the Northeast corner of Block No. 9 of the Highland Irrigation Subdivision of a portion of said survey, said beginning point being the Northeast corner of this tract;

Thence South along the East line of said survey and the East line of Blocks Nos. 9, 10, 11, 12, and 13 a distance of 1619.02 feet to a stake for the Southeast corner of this tract;

Thence North 89 deg. 59 min. West 1076.2 feet to a stake in the West line of Block 13 for the Southwest corner of this tract;

Thence North along the West line of Blocks Nos. 13, 14, 15, 16, and 17 a distance of 1619.02 feet to a stake for the Northwest corner of this tract;

Thence South 89 deg. 59 min. East 1076.2 feet to the place of beginning, and containing 40 acres.

Second Tract: All of Blocks No. 38 and 39 of the Highland Addition to the city of Wichita Falls, Texas (acreage subdivision) out of Cyrus Eakman Survey No. 2, Abstract No. 450, Wichita County, Texas.

Third Tract: 40 acres out of Blocks No. 13 and 42 of the Highland Addition of the city of Wichita Falls, Texas, (acreage subdivision) out of

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

Cyrus Eakman Survey, Abstract No. 450, Wichita County, Texas, as particularly described by metes and bounds as follows:

Beginning at a stake for the Southeast corner of said Block of Highland Irrigation lands, which stake is 30 feet North and 30 feet West from the Southeast corner of said Cyrus Eakman Survey;

Thence West along the North line of road 1634 feet to a stake; thence North 1066 feet to a stake in North line of Block 42;

Thence East with the North line of said Blocks 13 and 42 1634 feet to a stake for the Northeast corner of said Block 13 in the West line of road;

Thence South 1066 feet to the place of beginning, containing 40 acres of land.

Fourth Tract: All of Blocks No. 40 and 41 of Highland Addition (acreage subdivision) to the City of Wichita Falls, Texas, according to the plat of said subdivision of record in Plat Records of Wichita County, Texas, and all improvements thereon all four tracts.

All of these assets, including realties and personalties of Midwestern University and Hardin Junior College whether herein described or not, will be donated to the University herein created and made available for the exclusive use of the University herein created. The assets to be transferred being those held in the name of Midwestern University and Hardin Junior College on the effective date of this Act. Any and all indebtedness, bonded or otherwise, of Midwestern University and Hardin Junior College shall be removed as a lien and debt against the assets to be transferred to the University herein created.

The conveyance of the assets of Midwestern University and Hardin Junior College shall have an effective date of September 1, 1961, and this Act shall become invalid unless 30 days before said date the title to the above mentioned property is conveyed to the State of Texas for the use and benefit of Midwestern University as established by this Act. It being the intent of this Act for the University herein created to commence operations on September 1, 1961, and to begin classes with the Fall term 1961. Acts 1959, 56th Leg., p. 253, ch. 147, § 5.

#### Art. 2623c—6. Donations, gifts, and endowments

The Board of Regents of Midwestern University is authorized to accept donations, gifts, and endowments for the Institution to be held in trust and administered by said Board for such purposes and under such directions, limitations, and provisions, as may be declared in writing in the donation, gift, or endowment, not inconsistent with the objects and proper management of said Institution. Acts 1959, 56th Leg., p. 253, ch. 147, § 6.

#### Art. 2623c—7. Acquisition of corporeal properties

It is provided, however, that the Board of Regents of Midwestern University as herein created shall not institute or offer any course of study as herein provided unless and until suitable arrangements are made for the acquisition of the corporeal properties and facilities of said Midwestern University as it now exists and Hardin Junior College situated and located in the City of Wichita Falls and in Wichita County, Texas, and the Board of Regents herein created is hereby authorized to acquire by gift the corporeal properties and facilities of Midwestern University, a corporation, as it now exists, and Hardin Junior College, and provided also that appropriate arrangements shall be made by Midwestern University, as it now exists, and Hardin Junior College to pay and discharge any

indebtedness or indebtednesses, whatsoever, so that the corporeal properties of said Midwestern University as it now exists and Hardin Junior College shall be delivered to Midwestern University as herein created, free of any indebtedness or indebtednesses, whatsoever. Acts 1959, 56th Leg., p. 253, ch. 147, § 7.

## CHAPTER NINE—STATE TEACHERS' COLLEGES

### 4. SOUTHWEST TEXAS STATE COLLEGE

Art.  
2654.1 Change of name [New].

### 4. SOUTHWEST TEXAS STATE COLLEGE

Art. 2654.1 Change of name

Section 1. The name of Southwest Texas State Teachers College, located at San Marcos, Texas, is hereby changed to Southwest Texas State College.

Sec. 2. Wherever the name of Southwest Texas State Teachers College or any reference thereto appears in the Constitution or Statutes of this State, such name and such reference shall hereafter mean and apply to Southwest Texas State College in order to conform to the new name of the college as provided in Section 1 hereof. All appropriations and benefits to Southwest Texas State Teachers College shall be available to and apply to Southwest Texas State College, and all contracts, bonds, or other debentures effected under its old name shall be likewise applicable to such college under its new name. Acts 1959, 56th Leg., p. 14, ch. 8.

Emergency. Effective Sept. 1, 1959.

Section 3 of the Act of 1959 provided that this Act shall take effect on September 1, 1959.

Jurisdiction over public junior colleges, see art. 2815k—2.

Title of Act:

An Act changing the name of Southwest Texas State Teachers College to Southwest Texas State College; fixing an effective date; and declaring an emergency. Acts 1959, 56th Leg., p. 14, ch. 8.

## CHAPTER NINE A—TUITION AND CONTROL OF FUNDS OF STATE INSTITUTIONS

Art. 2654a. Tuition in state educational institutions

Section 1. No state educational institution shall collect from the student thereof any tuition, fee or charge of any kind whatever except as permitted by law, and no student shall be refused admission to or discharged from any such institution for the non-payment of any tuition, fee or charge except as permitted by law.

Sec. 2. In addition to tuition fees authorized by law, any such educational institution shall make and collect a laboratory charge in an amount sufficient to cover in general the cost of laboratory materials and supplies used by a student; provided, however, that such charge shall be not less than Two Dollars (\$2.) nor more than Eight Dollars (\$8.) for any one (1) semester or summer term from any student in any one (1) laboratory course. It is further provided that any such educational institution shall also collect a reasonable deposit, not to exceed Ten Dollars (\$10.), from each student to insure said institutions against losses, damages, and breakage in libraries and laboratories, said deposits to be re-

turned upon withdrawal or graduation of a student less such loss, damage, or breakage as may have been done by each individual student who has put up such deposit.

Sec. 3. The words "state educational institutions" as used in this Act shall include the following and any branch thereof: The University of Texas; the Agricultural and Mechanical College of Texas; Texas Western College; Tarleton State College; Arlington State College; Prairie View Agricultural and Mechanical College; Texas Technological College; Texas Southern University; Texas Woman's University; Texas College of Arts and Industries; Lamar State College of Technology; North Texas State College; Stephen F. Austin State College; Sul Ross State College; West Texas State College; East Texas State College; Sam Houston State Teachers College; Southwest Texas State College; Midwestern University; and any other state educational institutions either heretofore provided for or hereafter to be provided for under the Laws of this state.

Sec. 4. a. Each of the governing boards of the various institutions of higher learning covered by Section 3 of this Article is authorized to charge and collect from students registered in said respective institutions fees to cover the costs of student services which the said governing board deems necessary or desirable in carrying out the educational functions of the institution, such fee or fees to be either voluntary or compulsory as determined by the said governing boards. Provided, however, that the total of all such compulsory student service fees collected from all students shall not exceed Thirty Dollars (\$30.) for any one (1) semester or summer session. Provided, however, no fee for parking services or facilities may be levied on any student except those who choose and desire to use the parking facilities provided.

b. For the purpose of this Section, "student services" shall mean and include such services as textbook rentals, recreational activities, health and hospital services, automobile parking privileges, intramural and intercollegiate athletics, artists and lecture series, cultural entertainment series, debating and oratorical activities, student publications, student government, and any other student activities and services specifically authorized and approved by the appropriate governing board.

c. Each of the governing boards shall have the authority to fix and collect a reasonable fee or fees for the enforcement and administration of parking or traffic regulations approved by the boards for their respective institutions.

d. The provisions of this Section shall not repeal or apply the building use fees or other special fees previously authorized by the Legislature for any institutional or institutions for the purpose of financing revenue bond issues.

e. All moneys collected through any student fee or charge described by this Section shall be reserved and accounted for in an account or accounts kept separate and apart from educational and general funds of such institutions of higher education and shall be used only for the support of such student services. All such moneys shall be placed in such depository bank or banks as the respective governing boards may designate, and such deposits shall be secured as required by law. Each year the respective governing boards shall approve for each institution a separate budget for student activities and services financed by fees authorized in this Section, which budget shall show the fees to be assessed, the purpose or functions to be financed, the estimated income to be derived, and the proposed expenditures to be made. Copies of such budgets shall

be filed annually with the Texas Commission on Higher Education, the Governor, the Legislative Budget Board, the State Auditor, and the State Library.

f. The governing boards shall have the authority to waive all or part of any compulsory fee or fees authorized by this Section in the case of any student for whom the payment of such fee would cause an undue financial hardship, provided the number of such students does not exceed ten percent (10%) of the total enrollment, and shall have the authority to limit accordingly the participation of such student in the activities financed by the fee so waived. As amended Acts 1959, 56th Leg., 2nd C.S., p. 99, ch. 12, § 1.

Effective 90 days after June 16, 1959,  
date of adjournment.

Section 3 of the amendatory Act of 1959,  
make the Act effective Sept. 1, 1959. Section  
4 contained a severability clause.

**Art. 2654b—1. Exemption from fees; war veterans; auxiliary members; members of armed forces and their children; holders of scholarships**

Section 1. The governing boards of the several institutions of collegiate rank, supported in whole or in part by public funds appropriated from the State Treasury, are hereby authorized and directed to except and exempt all citizens of Texas, who have resided in Texas for a period of not less than twelve (12) months prior to the date of registration, and who served during the Spanish-American and/or during the World War as nurses or in the Armed Forces of the United States during the World War, and who are honorably discharged therefrom, and who were bona fide legal residents of this state at the time of entering such service, from the payment of all dues, fees and charges whatsoever, including fees for correspondence courses; provided, however, that the foregoing exemption shall not be construed to apply to deposits, such as library, or laboratory deposits, which may be required in the nature of a security for the return of or proper care of property loaned for the use of students, nor to any fees or charges for lodging, board or clothing. The governing boards of said institutions may and it shall be their duty to require every applicant claiming the benefit of the above exemption to submit satisfactory evidence that the applicant is a citizen of Texas and was a bona fide legal resident of Texas at the time of entering such service and is otherwise entitled to said exemption. As amended Acts 1959, 56th Leg., 2nd C.S., p. 99, ch. 12, § 2.

Effective 90 days after July 16, 1959,  
date of adjournment.

**Art. 2654d. Control of funds by governing boards**

Southwest Texas State Teachers College, change of name, see art. 2654.1.

**CHAPTER NINE B—ADMINISTRATION OF PUBLIC FREE SCHOOLS**

Art.  
2654—1a. Special program for preschool children with hearing loss [New].

Art.  
2654—1b. Preschool instructional program for non-English speaking children [New].

**Art. 2654—1a. Special program for preschool children with hearing loss**

Section 1. A special program for preschool children who have a hearing loss sufficiently severe to prevent adequate progress in speech devel-

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

opment shall be developed by the Central Education Agency. The purpose of said program shall be to prepare such children for entry into the first grade of the Texas School for the Deaf or the Texas Public Schools with a command of some form of communication with others.

Sec. 2. Any child three (3) years of age on his last birthday or older and who has a hearing loss sufficiently severe to prevent adequate speech development shall be eligible for such a program.

Sec. 3. The Central Education Agency shall establish the academic requirements for teachers who teach in this program and issue certificates to those who meet said standards.

Sec. 4. The cost of operating the special program for preschool children who have a hearing loss shall be borne by the State and each participating district on the same percentage basis that applies to financing the Minimum Foundation Program within that respective district. The cost of the program shall include a salary not to exceed the prevailing local salary scale and a maintenance and operational allotment of Fifty Dollars (\$50) per month for each teacher. The State's share of the cost shall be paid from the Minimum Foundation Program Fund, and this cost shall be considered by the Foundation Program Committee in estimating the funds needed for Foundation Program purposes. Acts 1959, 56th Leg., p. 933, ch. 430.

Effective 90 days after May 12, 1959,  
date of adjournment.

Section 5 of the Act of 1959 contained a severability clause.

Education and maintenance of totally deaf or non-speaking children, see art. 2675c—2.

Education and maintenance of totally deaf and blind or totally blind and non-speaking children, see art. 2675c—2.

#### **Art. 2654—1b. Preschool instructional program for non-English speaking children**

Section 1. A special program for non-English speaking children shall be developed by the Central Education Agency. The purpose of said program shall be to prepare such children for entry into the first grade of the Texas Public Schools with a command of essential English words which will afford them a better opportunity to complete successfully the work assigned them.

Sec. 2. The program for non-English speaking children shall cover a period of three (3) months. Any non-English speaking child who is at least five (5) years of age and who will be eligible to enter the first grade the ensuing school year may be enrolled.

Sec. 3. The Central Education Agency shall establish the academic requirements for teachers who teach in this program and issue certificates to those who meet said standards.

Sec. 4. The cost of operating the special program for non-English speaking children shall be borne by the State and each participating district on the same percentage basis that applies to financing the Minimum Foundation Program within that respective district. The cost of the program shall include a salary not to exceed Two Hundred Dollars (\$200) per month and a maintenance and operational allotment of not to exceed Fifty Dollars (\$50) per month for each teacher. The State's share of the cost shall be paid from the Minimum Foundation Program Fund, and this cost shall be considered by the Foundation Program Committee in estimating the funds needed for Foundation Program purposes; provided, however, that said program shall not be set up in any school district or combination of school districts unless a minimum of fifteen (15) children qualify for same and the extent to which any said school district shall



participate in the Minimum Foundation Fund over and above the first unit shall be based on an A D A of twenty (20) qualified pupils. No State funds provided for herein shall be used for any purpose other than for the non-English speaking program herein referred to. Acts 1959, 56th Leg., p. 1052, ch. 481.

Emergency. Effective 1959-60 school year. Section 5 of the Act of 1959 contained a severability clause.

**Art. 2654—3. Powers and Duties of Board**

Jurisdiction of State Board of Education over public junior colleges, see art. 2815k—2.

**Art. 2654—6. State Department of Education**

Jurisdiction of State Commissioner of Education over public junior colleges, see art. 2815k—2.

**CHAPTER TEN—STATE DEPARTMENT OF EDUCATION**

**2. STATE BOARD**

Art.

2675c—1. Repealed.

2675c—2. Totally deaf and blind or totally blind and non-speaking children; education and maintenance; duties of board [New].

**2. STATE BOARD**

**Art. 2675c—1. Repealed. Acts 1959, 56th Leg., p. 863, ch. 389, § 5. Eff. May 30, 1959**

Former art. 2675c—1 was derived from Acts 1955, 54th Leg., p. 446, ch. 122 and related to the education and maintenance of totally deaf and blind children. See now, art. 2675c—2.

**Art. 2675c—2. Totally deaf and blind or totally blind and non-speaking children; education and maintenance; duties of board**

Section 1. In this Act, unless the context otherwise requires:

(a) "A totally deaf and blind person" means a person having such defects of sight and hearing that in the determination of the Board, he may not be cared for, treated or educated in the manner provided for the blind or deaf.

(b) "A totally blind and non-speaking person" means a person having such defects of sight and speech, irrespective of cause or origin, that in the determination of the Board, he may not be cared for, treated or educated in the manner provided for the blind or non-speaking.

Sec. 2. The State Board of Education may provide for the maintenance, care and education of persons under the age of eighteen (18) years who are totally deaf and blind or who are totally blind and non-speaking.

Sec. 3. The Board may accept such persons on application of the parent or guardian and may require reimbursement for cost of maintenance, care and education as is provided by law for other deaf and blind persons or blind and non-speaking persons.

Sec. 4. The Board may negotiate and enter into contracts with public or private institutions within or without the State of Texas which are

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equipped to provide the specialized facilities and personnel necessary to care for and educate persons who are totally deaf and blind, or totally blind and non-speaking, and may provide transportation, maintenance and the necessary attendants to and from such institutions for such persons. The costs of such services for any persons eligible under the terms of this Act may be paid from appropriations made to the Central Education Agency for the care of persons who are totally deaf and blind. Acts 1959, 56th Leg., p. 863, ch. 389.

Emergency. Effective May 30, 1959.

Section 5 of the Act of 1959 repealed art. 2675c—1.

Application for maintenance, care and education of blind children, see art. 3202.

Exemption of the blind and deaf from attending schools, see art. 2893.

Jurisdiction of Central Education Agency over schools for the deaf and blind, see art. 2654—1.

Special program for preschool children with hearing loss, see art. 2654—1a.

Teachers certificate to teach the blind, see art. 2889b.

Texas blind, deaf and orphan school, see art. 3221 et seq.

Texas school for the blind, see art. 3206 et seq.

Texas school for the deaf, see art. 3203 et seq.

Title of Act:

An Act providing for the maintenance, care and education of persons under the age of eighteen (18) years who are totally deaf and blind or totally blind and non-speaking; defining certain terms; providing for payment of such services; repealing Chapter 122, Acts of the Fifty-fourth Legislature, 1955; and declaring an emergency. Acts 1959, 56th Leg., p. 863, ch. 389.

## CHAPTER THIRTEEN—SCHOOL DISTRICTS

### 1. COMMON SCHOOL DISTRICTS

Art.

2741a. Change of name of school district [New].

2746c. Joint elections of governing bodies of school districts [New].

### 3. INDEPENDENT DISTRICTS IN CITIES

2775a—2. Election of trustees by separate positions in independent districts of 18,000 or more scholastics [New].

2775b. Election of trustees in counties of 110,000 to 800,000; terms; vacancies [New].

2775c. Election of trustees in district of 1,831 to 1,835 scholastics containing city of 4,427 to 4,430 [New].

2777d—1. Terms of office of trustees in districts within cities of 2,620 to 2,630 population [New].

2784e—2. Additional tax for common school districts in counties of 20,560 to 20,850 population [New].

2784e—3. Additional tax for common school districts in counties of 70,500 to 73,800 population [New].

2784e—4. Power of board of education to levy annual ad valorem tax; purposes [New].

2790d—9. Time warrants of independent districts; counties of 806,700 to 806,750 [New].

2790n. Issuance of time warrants in counties of 800,000 or more [New].

Art.

2802i—31. Additional tax for construction, repair and equipment of schools in counties with population in excess of 150,000; purchase of sites; election [New].

### 5. ADDITIONS AND CONSOLIDATIONS

2803d. Addition of territory to independent district of 30,220 scholastics; approval of board prior to election [New].

2806d—1. Validating acts of county boards of school trustees in ordering elections for consolidation of independent school districts [New].

### 6. DISTRICTS IN LARGE COUNTIES

2815g—52. Validation of districts; acts of trustees; additions of territory; elections; bonds; boundaries; taxes; exceptions [New].

### 7. JUNIOR COLLEGES

2815h—9. Purchase of additional lands after 30 per cent increase in student enrollments [New].

2815k—2. Jurisdiction of Central Education Agency, State Board of Education and State Commission of Education over public junior colleges [New].

2815o—1a. Validation of organization of boards of regents [New].

### 8. REGIONAL COLLEGE DISTRICTS [NEW]

2815t—1. Power of eminent domain [New].

## 1. COMMON SCHOOL DISTRICTS

## Art. 2741a. Change of name of school district

Section 1. Whenever any school district in this state shall determine that the name of such district needs amending by adding or deleting therefrom any word or words, any name or names of towns or cities, the board of trustees of such district may, by resolution, change the name of the district.

Notice of the change in name shall be given to the Texas Central Education Agency by sending a copy of the resolution, attested by the president and secretary of the board, to the State Commissioner of Education. The district, under its changed name, shall be deemed to be a continuation of the district, as formerly named, for all purposes. This Act shall apply to all school districts whether created by special Act of the Legislature or by General Laws. Acts 1959, 56th Leg., p. 125, ch. 73.

Emergency. Effective April 14, 1959.

## Title of Act:

An Act authorizing any school district to change its name, under certain conditions; and declaring an emergency. Acts 1959, 56th Leg., p. 125, ch. 73.

## Art. 2745b. Time of school elections; effective date of article

In counties having a population of five hundred thousand (500,000) or more, according to the last preceding Federal Census, all school elections now held on the first Saturday in May for the purpose of electing trustees, whether county trustees or district trustees, and whether in districts created by Special Acts or otherwise, may hereafter be held on the first Saturday in April or on such other Saturday as may be hereafter authorized by law for such districts as the trustees by official resolution may provide. Provided, however, that this Act shall not become effective until January 1, 1960, and shall be cumulative of existing laws. As amended Acts 1959, 56th Leg., 2nd C.S., p. 114, ch. 21, § 1.

Effective 90 days after July 16, 1959, date of adjournment.

Section of the amendatory Act of 1959 contained a severability clause.

## Art. 2745c. Time for filing application as candidate for trustee; printing ballot; absentee voting

In all elections for the office of county school trustee or trustee of any school district, however created or designated, the applications of candidates for a place on the ballot shall be filed not less than thirty (30) days prior to the day of the election and the ballots shall be printed not less than twenty (20) days prior to the day of the election. Applications of candidates for county school trustee or for trustee of a common school district or an independent school district as described in Article 2746a of the Revised Civil Statutes, as amended, shall be filed with the county judge, and applications of candidates for trustee of any other school district shall be filed with the secretary of the school board of trustees. The application shall be in writing and shall be signed by the candidate. In each election it shall be the duty of the county judge with respect to applications filed with that officer, and of the board of trustees with respect to applications filed with the board, to prepare the official ballot for the election and to place thereon the names of all eligible candidates whose applications have been duly filed. It shall further be the duty of the officer or board charged with the preparation of the ballots to deliver to the county clerk, on or before the twentieth day preceding the day of the election, a sufficient number of ballots to accommodate applications for

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absentee ballots in such election; and it shall be the duty of the county clerk to conduct the absentee voting in the election in accordance with the general election laws relating to absentee voting. Paper ballots shall be used for absentee voting in all such elections, including elections in districts where voting machines are used at regular polling places. Acts 1957, 55th Leg., p. 555, ch. 262, § 1 as amended Acts 1959, 56th Leg., p. 699, ch. 320, § 1.

Emergency. Effective May 30, 1959.

Section 2 of the amendatory Act of 1959 repealed all conflicting laws and parts of laws to the extent of such conflict only.

#### Art. 2746c. Joint elections of governing bodies of school districts

Section 1. Whenever an election for members of the county board of school trustees, the board of education, board of trustees or other governing board of any school district, or the board of regents, board of trustees or other governing board of any junior college district, regional college district or other type of college district, is to be held on the same day and within all or part of the same territory as any other of the elections herein enumerated, the various officers, boards or bodies charged with the duty of appointing the election officers, providing the supplies, canvassing the returns, and paying the expenses of such elections may agree to hold the elections jointly and may agree upon the method for allocating the expenses for the joint election. Resolutions reciting the terms of the agreement shall be adopted by each of the participating boards or bodies. The agreement may provide for use of a single ballot form at each polling place, to contain all the offices to be voted on at that polling place, or for separate ballot forms which may combine two or more of the sets of county or district offices to be voted on, provided that all of the offices and candidates for each district or political subdivision shall appear on the same ballot. One set of election officers may be appointed to conduct the joint election, and any person otherwise qualified who is a resident of either of the districts or political subdivisions holding the election shall be eligible to serve as an election officer. Poll lists, tally sheets, and return forms for the various elections may be combined in any manner convenient and adequate to record and report the results of each election, and one set of ballot boxes and one stub box may be used for receiving all ballots and ballot stubs for the joint election. Returns on joint or separate forms may be made to, and the canvass made by, each officer, board or body designated by law to receive and canvass the returns of each election, or one of such officers, boards or bodies may be designated to receive and canvass the returns for the joint election and to report the results of each election to the proper authority. Where the counted ballots for two or more of the elections are deposited in a single ballot box, the box containing the counted ballots shall be returned to the officer or board designated in the agreement, which shall be an officer or board designated by law to receive and preserve the counted ballots for one of the elections constituting a part of the joint election. Acts 1959, 56th Leg., p. 226, ch. 133.

Emergency. Effective April 29, 1959.

Board of county school trustees, election, see art. 2815g.

Board of trustees of independent districts in towns, election, see art. 2758.

School trustees of certain independent districts, election, see art. 2775 et seq.

School trustees of independent districts in cities, election, see art. 2774a.

Trustees of junior college districts, election, see art. 2815n.

#### Title of Act:

An Act authorizing the holding of joint elections for members of the county board of school trustees and governing bodies of school districts and college districts; providing procedures for such joint elections; and declaring an emergency. Acts 1959, 56th Leg., p. 226, ch. 133.

## 2. INDEPENDENT DISTRICTS IN TOWN

## Art. 2757. 2851—54 Incorporation of town

Any common school district containing one hundred and sixty-five (165) inhabitants or more, and containing an area of not less than eighty-three (83) square miles, and having an assessed property valuation of Three Million Dollars (\$3,000,000.00) or more may form an incorporation for free school purposes only, which may or may not include within its bounds any town or village incorporated for municipal purposes, the same not having assumed control of the public free schools within its limits. The territory so incorporated shall hereinafter be called an "independent school district" and said incorporation shall be laid out in a square as near as may be practicable with reference to the location of a school building.

Whenever any such common school district as herein provided is desired to be so incorporated there shall be presented to the county judge a petition signed by twenty (20) or a majority of the resident qualified voters thereof praying for an election to be ordered for the purpose of determining the question of such incorporation. Said petition shall also contain a definite description by metes and bounds of such common school district proposed to be so incorporated, and said petition shall recite the name by which such independent school district shall be known, and said petition shall pray for an election to determine whether said common school district shall be incorporated as an independent school district, and for the election of seven (7) trustees.

Upon presentation of said petition to the county judge as herein provided, such county judge shall enter his order upon the minutes of the Commissioners Court granting said petition, provided that said county judge finds and determines the sufficiency of such petition and that the facts presented to him in support of such petition are true and substantially inclusive. Such order of election by said county judge shall, when made, specify the date of said election which shall be held within twenty (20) days from the date of such order, and shall designate the place or places at which said election shall be held in said common school district proposed to be so incorporated, and said county judge shall, by such order, appoint a presiding officer for the place or each of the places of said election, and said county judge shall also, in entering such election order, describe the proposition to be so submitted together with a definite description by metes and bounds of the common school district proposed to be so incorporated. The said county judge shall issue a notice of such election stating in substance the contents of such election order and the time and place or places of said election, and said county judge shall cause the sheriff to post a copy of such notice of election in three (3) different public places within the boundaries of such common school district as described in said election order, which posting shall be done not less than ten (10) days prior to the date fixed for said election.

The said election shall be held under the provisions of the laws of this state regulating general elections, except as herein otherwise provided, and only qualified voters who are residents of the common school district proposed to be so incorporated, shall be entitled to vote at said election. The officers holding the said election shall make returns of the result thereof to said county judge, and said county judge shall canvass such returns and declare the results of said election, and if a majority of the votes cast at said election shall have been cast in favor of such incorporation, then said county judge shall so find and enter his order

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to that effect and incorporating said independent school district upon the minutes of the Commissioners Court and cause the county clerk to record a certified copy of such order in the deed records of the county. Thereupon, such "independent school district" shall thereafter be regarded as duly incorporated for free school purposes only and shall have and is hereby vested with all the rights, powers and privileges conferred and imposed by the general laws of this state upon independent school districts. And said independent school district, shall, upon notice to the State Superintendent of Education, be entitled to receive its share of the available school fund to which it is entitled as provided by the laws of this state.

Whenever any incorporated town or village is included within the boundaries of any incorporated independent school district and such town or village be thereafter incorporated for municipal purposes, it shall not thereby acquire any right to take or assume control of the public free schools within its limits. As amended Acts 1959, 56th Leg., p. 201, ch. 114, § 1.

Effective 90 days after May 12, 1959, date of adjournment.

Section 1a of Acts 1959, 56th Leg., p. 201, ch. 114, declared the legislative intention to lower the population brackets of certain sparsely populated common school districts and provided that the act

should not be construed to permit any common school district to decrease its area limits or to permit a segment or portion of any existing school district to detach itself from any part of the presently existing area of such district taking advantage of the terms of this act.

#### **Art. 2758. 2852—3 Board of trustees**

Joint elections of governing bodies of school districts, see art. 2746c.

### INDEPENDENT DISTRICTS IN CITIES

#### **Art. 2774a. Appointment or election and terms of school trustees in certain districts**

Joint elections of governing bodies of school districts, see art. 2746c.

#### **Art. 2775. 2886 Election**

Joint elections of governing bodies of school districts, see art. 2746c.

#### **Art. 2775a—2. Election of trustees by separate positions in independent districts of 18,000 or more scholastics**

Section 1. In all independent school districts, whether created under the General Laws or by Special Act of the Legislature, having eighteen thousand (18,000) or more scholastics according to the last scholastic census, in which the candidates for school trustee are not voted on and elected by separate positions under some other applicable Statute, the Board of Trustees of any such independent school district may, by appropriate action, taken at least sixty (60) days prior to the first election of school trustees after the effective date of this Act, order that all candidates for school trustee be voted upon and elected separately for positions on the Board of Trustees and all candidates shall be designated on the official ballots according to the number of the position to which they seek election. At least sixty (60) days prior to the first election which is governed by this Act in each district now or hereafter coming within its

provisions, the Board of Trustees shall number the positions in the order in which the terms of office expire, the expiring terms which are to be filled at the first election to be numbered Position No. 1, Position No. 2, and so on, and the next succeeding terms expiring to take the next larger numbers, until all of the positions have been numbered. Thereafter, any candidate offering himself for a position as trustee of such district in any election shall indicate the number of the position for which he desires to run, and his application for a place on the ballot shall disclose the position number for which he is a candidate or the name of the incumbent member holding the position for which he desires to run. The names of the candidates for each position shall be arranged by lot by the Board of Trustees of the district. Once the Board of Trustees of an independent school district shall have adopted the foregoing procedure for elections, said Board of Trustees or their successors may not rescind the action which adopted the foregoing procedure.

Sec. 2. This Act shall not repeal or affect any other Statute providing for the election of school trustees by position number. All other laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict only. Acts 1959, 56th Leg., p. 1054, ch. 482.

Effective 90 days after May 12, 1959, date of adjournment.

Title of Act:

An Act providing for the election of school trustees by separate positions in certain independent school districts; providing that when the Board of Trustees

adopt the procedure herein it may not rescind such action; repealing all laws in conflict except Statutes providing for election of school trustees by position number; and declaring an emergency. Acts 1959, 56th Leg., p. 1054, ch. 482.

**Art. 2775b. Election of trustees in counties of 110,000 to 800,000; terms; vacancies**

Section 1. This Act shall apply to all independent school districts located in part in counties having a population of between one hundred and ten thousand (110,000) and eight hundred thousand (800,000) inhabitants according to the last preceding Federal Census, and in part in counties having a population of eight hundred thousand (800,000) inhabitants or more according to the last preceding Federal Census, created or organized and operating as an independent school district under the General Laws of the State of Texas; provided, however, that this Act shall not apply to any such district unless and until the board of trustees thereof adopts an order or Resolution adopting the provisions hereof. And once the board of trustees shall have adopted the provision hereof by order or Resolution, then thereafter all elections in such district shall be held and governed by the terms hereof.

Sec. 2. This Section 2 shall apply to independent school districts coming within the purview of Section 1 hereof if the term of office of trustees of such districts is for three (3) years. After the board of trustees of any such district has adopted the order or Resolution mentioned in Section 1 hereof, the position or office of each member of the board of trustees of such district shall be identified by number in the order in which such terms expire, the first two (2) or three (3) terms which next expire to be numbered (1) one and (2) two, or (1) one, (2) two and (3) three, as the case may be, and the next succeeding terms expiring to take the next larger numbers until all seven (7) positions have been numbered. Thereafter, any candidate offering himself for a position as trustee of such district in any election shall in filing as a candidate indicate the number of the position for which he is a candidate. The term of office of trustees shall be for three (3) years and until their

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successors are elected and qualified, and elections shall be held on the first Saturday in April of each year. At the first election held after such district has adopted the provisions of this Act, if only positions (1) one and (2) two are the next expiring terms, then said positions shall be filled at such election for a term of three (3) years; if positions (1) one, (2) two, and (3) three are the next expiring terms, then said positions shall be filled at such election for a term of three (3) years. At the second and third elections, the remaining positions shall be filled in like manner, so that all seven (7) positions will be filled at said first three (3) elections but not more than three (3) nor less than two (2) positions will be filled at any one of said first three (3) elections. Regularly thereafter on the first Saturday in April of each year, three (3) trustees or two (2) trustees shall be elected for a term of three (3) years to succeed the trustees whose term shall at that time expire. The candidate for a particular position receiving the largest number of votes for such position shall be the trustee elected for such position.

Sec. 3. The members of the board of trustees remaining after a vacancy occurs shall fill the same for the unexpired term.

Sec. 4. This Act shall be cumulative of all other laws, General and Special, relating to the subject matter hereof. In all matters not covered by the terms hereof, the provisions of the General Laws shall govern. Acts 1959, 56th Leg., p. 15, ch. 9.

Emergency. Effective March 3, 1959.

Section 5 of the Act of 1959 contained a severability clause.

**Art. 2775c. Election of trustees in district of 1,831 to 1,835 scholastics containing city of 4,427 to 4,430**

Section 1. This Act shall apply to all independent school districts created by Special Act of the Legislature, operating under the General Laws, having as many as one thousand, eight hundred and thirty-one (1,831) and not more than one thousand, eight hundred and thirty-five (1,835) scholastics, according to the last official scholastic census, and wherein there is situated a city having a population of as many as four thousand, four hundred and twenty-seven (4,427) and not more than four thousand, four hundred and thirty (4,430), according to the last preceding federal census, and having a Board of seven (7) trustees whose terms of office are for three (3) years.

Sec. 2. All candidates for school trustee in any such independent school district, notwithstanding any contrary or inconsistent provisions in any other General or Special Law, shall be voted upon and elected separately for positions on said Board of Trustees, and all candidates shall be designated on the official ballot according to the number of such position to which they seek election. Such official ballot shall have printed on it the following: "Official Ballot for the Purpose of Electing Trustees," giving the name of the school district together with the designating number of each position to be filled, with the list of candidates under the position to which they respectively seek election. No language used in any part of this Act shall be interpreted to preclude the use of mechanical devices in voting. Candidates shall be elected by plurality in accordance with the laws of this State as applied to elections generally.

Sec. 3. Within ten (10) days from the date this Act shall become effective, the trustees of any such independent school district shall determine by lot the position they shall hold on said Board of Trustee as follows: Those whose terms of office expire during the year 1959, or who



shall have been elected during the year 1959 if this Act shall not become effective until after April 1, 1959, shall draw for positions numbers One (1), Two (2) and Three (3); those whose terms of office expire during the year 1960 shall draw for positions numbers Four (4) and Five (5); those whose terms of office expire during the year 1961 shall draw for positions numbers Six (6) and Seven (7); thereafter (a) if this Act shall become effective on or before April 1, 1959, positions numbers One (1), Two (2) and Three (3) shall be open for candidates to be elected at an election to be held on the first Saturday in May, 1959; (b) without regard to the effective date of this Act, positions numbers Four (4) and Five (5) shall be open for candidates to be elected at an election to be held on the first Saturday in May, 1960; (c) without regard to the effective date of this Act, positions numbers Six (6) and Seven (7) shall be open for candidates to be elected at an election to be held on the first Saturday in May, 1961, and thereafter on the first Saturday of May of each calendar year, either two (2) or three (3) trustees, as the case may be, shall be elected in like manner to the positions on such Board of Trustees; (d) if this Act shall not become effective on or before April 1, 1959, positions numbers One (1), Two (2) and Three (3) shall be open for candidates to be elected at an election to be held on the first Saturday in May, 1962, and thereafter on the first Saturday of May of each calendar year, either two (2) or three (3) trustees, as the case may be, shall be elected in like manner.

Sec. 4. Any person desiring election for a position on any such Board of Trustees shall, not less than thirty (30) days prior to the date of said election, file with the Board of Trustees ordering such election, written notice announcing his or her candidacy, designating in such written notice and request to have his or her name placed on the official ballot, the number of the position on such Board of Trustees for which he or she, as the case may be, desires to become a candidate, and all candidates so requesting shall have their names printed on the official ballot beneath the number of the positions so designated. No person who does not so file said notice and request within the time aforesaid shall be entitled to have his or her name printed on said official ballot to be used at any such election. No candidate shall be eligible to have his or her name placed on the official ballot under more than one (1) position to be filled at any such election.

Sec. 5. In any such election, each voter shall vote for only one (1) candidate for each such position. The candidate receiving the highest number of votes for each respective position voted upon at any such election shall be entitled to serve as a trustee on said Board, holding the position thereon to which he or she, as the case may be, shall have been so elected.

Sec. 6. Notice of all elections for trustees in any such school district included within the terms of this Act heretofore created by Special Act of the Legislature, shall be given in the manner and for the time required by such Special Acts and such elections in any such district shall be held in the manner and in conformity with such Special Acts so creating such special districts, except where any such Special Act may be in conflict herewith, in which event this Act shall control; and, if such Special Acts do not so provide, then notice of all elections for trustees in any independent school district included within the terms of this Act shall be given in the manner and for the time required by the General Laws relating to such subject and such elections in any such district shall be held in the manner and in conformity with such General Laws

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except where any such General Laws may be in conflict herewith, in which event this Act shall control. Acts 1959, 56th Leg., p. 37, ch. 24.

Emergency. Effective March 10, 1959.

Section 7 of the Act of 1959 repeals all conflicting laws and parts of laws to the extent of the conflict only.

#### Art. 2777d. Term of office of school trustees in certain districts

##### Districts unable to elect trustees under act

Sec. 4a. Any independent school district which has previously elected its trustees under the terms of this Act and which, because of increases in the area and/or population of the city within its boundaries, will not come within the terms of this Act on the date of its next trustee election or any subsequent trustee election, may, by resolution of the board of trustees of such district elect to continue to select its trustees under the terms and provisions of this Act. Added Acts 1959, 56th Leg., p. 184, ch. 102, § 1.

Effective 90 days after May 12, 1959, date of adjournment.

#### Art. 2777d—1. Terms of office of trustees in districts within cities of 2,620 to 2,630 population

##### Application of act

Section 1. This Act shall apply in all independent school districts, whether created under the General Laws or by Special Act of the Legislature and having a board of seven (7) trustees and where the greatest geographic portion of all such independent school districts are situated within the boundaries of a city having a population in excess of two thousand, six hundred and twenty (2,620) and not more than two thousand, six hundred and thirty (2,630), as shown by the last preceding Federal Census and where heretofore, four (4) trustees were elected for two (2) year terms on the first Saturday in May in even-numbered years and three (3) trustees were elected for two (2) year terms in odd-numbered years.

##### Terms of office

Sec. 2. The three (3) trustees elected to office on the first Saturday in May of 1959 shall serve a term of three (3) years and their term of office shall expire on the first Saturday in May of 1962 and on the first Saturday in May of 1962, three (3) trustees shall be elected in such districts for three (3) year terms each and the same procedure shall be followed on the first Saturday in May of each third year thereafter. The terms of office of two (2) of the four (4) trustees elected to office on the first Saturday in May of 1958 shall expire on the first Saturday in May of 1960 and an election shall be had on the first Saturday in May of 1960 in such independent school districts and at such election two (2) trustees shall be elected in such districts for a term of three (3) years each and there shall be an election of two trustees for a term of three (3) years each on the first Saturday in May of each third year thereafter. The terms of office of the other two (2) of the four (4) trustees elected on the first Saturday in May of 1958, shall expire on the first Saturday in May of 1961 and there shall be an election in such independent school districts on the first Saturday in May of 1961 of two (2) trustees for a

term of three (3) years each and there shall be an election of two (2) trustees for a term of three (3) years each on the first Saturday in May of each third year thereafter.

**Choosing terms by lots**

Sec. 3. There shall be a drawing of lots by the four (4) trustees elected on the first Saturday in May of 1958 at the first regular meeting of the board of trustees of the independent school districts within the purview of this Act after the effective date of this Act, and the lots shall be numbered 1, 2, 3 and 4 and the two (2) trustees that draw the lots marked 1 and 2 shall have their terms of office expire on the first Saturday in May of 1960 and the terms of office of the two (2) trustees that draw lots numbered 3 and 4 shall expire on the first Saturday in May of 1961.

**Subsequent elections**

Sec. 4. After the first election of a three (3) year term, as herein provided for, all subsequent elections shall be held every three (3) years, and at each such election there shall be elected alternately two (2) school trustees, or three (3) school trustees, as the case may be, for a term of three (3) years.

**Vacancies**

Sec. 5. If any vacancy or vacancies occur in the membership of any such Board of School Trustees, such vacancy or vacancies shall be filled by the majority vote of the remaining school trustees of such school district, but any school trustees so elected to fill a vacancy shall serve only for the unexpired term of his or her predecessor.

**Conduct of elections**

Sec. 6. Except as modified by this Act, all such elections in such independent school districts shall be held in the manner and in conformity with provisions of law now applicable.

**Provisions of act cumulative; conflicting provisions**

Sec. 7. The provisions of this Act shall be cumulative of all General Laws on the subject not in conflict herewith, and where not otherwise provided herein, such General Laws shall apply, but in case of conflict the provisions of this Act shall control and be effective. Acts 1959, 56th Leg., 1st C.S., p. 49, ch. 21.

Effective 90 days after June 16, 1959,  
date of adjournment.

**Title of Act:**

An Act relating to terms of office of school trustees in certain school districts; choosing terms by lots; providing

for subsequent elections and filling of vacancies; providing that provisions of this Act shall be cumulative; and declaring an emergency. Acts 1959, 56th Leg., 1st C.S., p. 49, ch. 21.

**4. TAXES AND BONDS**

**Art. 2784e—2. Additional tax for common school districts in counties of 20,560 to 20,850 population**

Section 1. The Commissioners Court for the common school districts in all counties having a population of not less than twenty thousand, five hundred and sixty (20,560) persons nor more than twenty thousand, eight hundred and fifty (20,850), according to the last preceding Federal

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census, may levy and cause to be collected a tax, in addition to that authorized under Section 1, Chapter 304, Acts of the Forty-ninth Legislature, 1945, as amended (compiled as Article 2784e of Vernon's Annotated Revised Civil Statutes), not to exceed Fifty Cents (\$.50) on the One Hundred Dollar (\$100) valuation of taxable property of the district for the maintenance and use of the schools therein. The limitation imposed by Subsection 3, Section 1, Chapter 304, Acts of the Forty-ninth Legislature, 1945, as amended (compiled as Section 3, Article 2784e of Vernon's Annotated Revised Civil Statutes of Texas), shall not apply to the additional tax provided for in this Section and the tax provided for in this Section shall be in addition to that limit.

Sec. 2. No tax shall be levied, collected, abrogated, diminished or increased hereunder until such action has been authorized by a majority of the votes cast at an election held in the district for such purposes, at which none but property taxpaying qualified voters of such district shall be entitled to vote. Acts 1959, 56th Leg., p. 943, ch. 437.

Emergency. Effective May 30, 1959.

Common school tax, see art. 2793.

Election to determine change in tax rate, see art. 2794.

Levy of common school tax, see art. 2795.

**Title of Act:**

An Act relating to an additional tax for common school districts in certain counties; and declaring an emergency. Acts 1959, 56th Leg., p. 943, ch. 437.

**Art. 2784e—3. Additional tax for common school districts in counties of 70,500 to 73,800 population**

Section 1. The Commissioners Court for the common school districts in all counties having a population of not less than seventy thousand, five hundred (70,500) persons nor more than seventy-three thousand, eight hundred (73,800), according to the last preceding Federal Census, may levy and cause to be collected a tax, in addition to that authorized under Section 1, Chapter 304, Acts of the Forty-ninth Legislature, 1945, as amended (compiled as Article 2784e of Vernon's Annotated Revised Civil Statutes), not to exceed fifty cents (50¢) on the One Hundred Dollar (\$100) valuation of taxable property of the district for the maintenance and use of the schools therein. The limitation imposed by Subsection 3, Section 1, Chapter 304, Acts of the Forty-ninth Legislature, 1945, as amended (compiled as Section 3, Article 2784e of Vernon's Annotated Revised Civil Statutes of Texas), shall not apply to the additional tax provided for in this Section and the tax provided for in this Section shall be in addition to that limit.

Sec. 2. No tax shall be levied, collected, abrogated, diminished, or increased hereunder until such action has been authorized by a majority of the votes cast at an election held in the district for such purposes, at which none but property taxpaying qualified voters of such district shall be entitled to vote. Acts 1959, 56th Leg., p. 1007, ch. 468.

Emergency. Effective May 30, 1959.

Common school tax, see art. 2793.

Election to determine change in tax rate, see art. 2794.

Levy of common school tax, see art. 2795.

**Title of Act:**

An Act relating to an additional tax for common school districts in certain counties; and declaring an emergency. Acts 1959, 56th Leg., p. 1007, ch. 468.

**Art. 2784e—4. Power of board of education to levy annual ad valorem tax; purposes**

Section 1. The Board of Education of a common school district and/or a common consolidated school district may levy an annual ad valorem tax

not to exceed the limits now set by law for maintenance and operation and for the purpose of purchasing, constructing, repairing or equipping public free school buildings within the limits of such school district provided such district lies wholly within a county which is partially bounded by two (2) or more other states and provided further that such district has a total scholastic population in excess of two hundred (200). The Board of Education may appoint an assessor of taxes who shall assess the taxable property within the limits of said district within the time provided by assessing laws, and said assessment shall be equalized by a Board of Equalization composed of three (3) members appointed by the Board of Trustees of said school district. The said Board of Equalization shall be composed of legally qualified voters residing in said district, and shall have the same power and authority, and be subject to the same restrictions that now govern such boards in independent school districts. The compensation of the tax assessor shall be the same as that provided in Article 2922L. The county tax collector shall continue to collect such tax in compliance with the provisions of that Article.

Sec. 2. The provisions of Section 1 shall become effective in eligible districts upon the adoption of a resolution by the governing board of the common school district or the common consolidated school district and approval of said resolution by the County Board of School Trustees. Acts 1959, 56th Leg., 2nd C.S., p. 98, ch. 11.

Emergency. Effective July 13, 1959.

**Art. 2784g. Bond and maintenance tax rate in certain districts in county with population of 700,000 or more**

Sec. 4. Repealed. Acts 1959, 56th Leg., p. 14, ch. 7, § 1.

Emergency. Effective Feb. 28, 1959.

Section 4 of this article, derived from Acts 1953, 53rd Leg., p. 710, ch. 273, made the Act inapplicable to school districts having assessed valuation for tax purposes in excess of one billion dollars.

**Art. 2790d—9. Time warrants of independent districts; counties of 806,700 to 806,750**

Section 1. This Act shall apply to all independent school districts in counties of more than eight hundred six thousand, seven hundred (806,700) and less than eight hundred six thousand, seven hundred and fifty (806,750) inhabitants, according to the last preceding Federal Census. If during a scholastic year the Board of Trustees of any such school district determines that there will be insufficient funds to properly maintain and operate the schools in said district during the remainder of such scholastic year, said Board is hereby authorized to issue time warrants for the purpose of obtaining funds with which to maintain and operate the schools in said district during the remainder of such scholastic year. Said Board shall authorize the warrants by appropriate order in which a tax shall be levied for the payment of the interest on and the principal of such warrants. Said warrants shall be payable serially and annually over a period of years not to exceed ten (10) and shall bear interest at a rate not to exceed five per cent (5%). They shall be signed by the President of the Board of Trustees and countersigned by the Secretary; provided, however, that their facsimile signatures may be printed or lithographed on any coupons of said warrants. Said warrants shall be placed in an interest and sinking fund created for the benefit thereof; provided, also, that any delinquent taxes collected after the issuance of said warrants, which delinquent taxes have not been earmarked for other purposes, may also be placed in said interest and sinking fund. The moneys of said fund

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shall be paid out only to pay the interest and principal requirements of said warrants.

Sec. 2. Provided, however, that the aggregate amount of time warrants that may be issued in any one (1) scholastic year shall not exceed Two Hundred Thousand Dollars (\$200,000).

Sec. 3. No warrants authorized to be issued or executed under this Act shall be issued or executed after the expiration of two (2) years from the effective date of this Act. Acts 1959, 56th Leg., p. 140, ch. 82.

Emergency. Effective April 16, 1959.

#### Art. 2790n. Issuance of time warrants in counties of 800,000 or more

Section 1. This Act shall apply to all independent school districts in counties having a population of eight hundred thousand (800,000) or more, according to the last preceding Federal Census. If, during a scholastic year, the board of trustees of any such school district determines that there will be insufficient funds to properly maintain and operate the schools in said district during the remainder of such scholastic year, said board is hereby authorized to issue time warrants for the purpose of obtaining funds with which to maintain and operate the schools in said district during the remainder of such scholastic year. Said board shall authorize the warrants by appropriate order in which a tax shall be levied for the payment of the interest on and principal of such warrants. Said warrants shall be payable serially and annually over a period of years not to exceed ten (10), and shall bear interest at a rate not to exceed five percent (5%). They shall be signed by the president of the board of trustees and countersigned by the secretary; provided, however, that their facsimile signatures may be printed or lithographed on any coupons of said warrants. Said warrants shall not be sold for less than par and accrued interest. All taxes levied and collected for the benefit of such warrants shall be placed in an interest and sinking fund created for the benefit thereof; provided, also, that any delinquent taxes collected after the issuance of said warrants, which delinquent taxes have not been earmarked for other purposes, may also be placed in said interest and sinking fund. The moneys of said fund shall be paid out only to pay the interest and principal requirements of said warrants.

Sec. 2. Provided, however, that the aggregate amount of time warrants that may be issued in any one (1) scholastic year shall not exceed Two Hundred Thousand Dollars (\$200,000.00).

Sec. 3. No warrants authorized to be issued or executed under this Act shall be issued or executed after the expiration of two (2) years from the effective date of this Act. Acts 1959, 56th Leg., p. 247, ch. 142.

Emergency. Effective May 6, 1959.

#### Title of Act:

An Act authorizing independent school districts in counties having a population of eight hundred thousand (800,000) or

more according to the last preceding Federal Census to issue time warrants; and declaring an emergency. Acts 1959, 56th Leg., p. 247, ch. 142.

#### Art. 2802i—31. Additional tax for construction, repair and equipment of schools in counties with population in excess of 150,000; purchase of sites; election

Section 1. Any school district whether created under general or special law, having all or a portion of its territory situated in a county having a population of more than one hundred fifty thousand (150,000) according to the last preceding Federal Census and having or acquiring the authority

to levy under then existing law an ad valorem tax of not to exceed One Dollar and Seventy-five Cents (\$1.75) per One Hundred Dollars (\$100.00) of assessed valuation for maintenance purposes, shall have the authority to levy, apportion and expend out of any such maintenance tax levy Fifty Cents (50¢) per One Hundred Dollars (\$100.00) of assessed valuation for the purpose of paying the cost of purchase, construction, repair, renovation and equipment of public free school buildings and purchase of sites therefor; provided, however, that no bonds or other evidences of indebtedness may be issued payable in whole or in part from the maintenance tax so levied and allocated and provided further that no contract shall be made which will encumber more than the revenues on hand and to be collected from said tax in any one fiscal year.

Sec. 2. The levy, allocation and expenditure of such portion of the maintenance tax as herein provided, may be made after such action has been approved by a majority of the resident, qualified property tax paying voters, who own taxable property within the district which has been duly rendered for taxation, participating in an election called for that purpose. This Act shall not affect maintenance taxes levied for the year 1958 and prior years by any school district adopting same.

Sec. 3. It is the intent of this Act to confer upon school districts to which it is applicable now or hereafter, the right and power to make contracts for the expenditure of maintenance funds for the same purpose as it may issue bonds, without the necessity of issuing bonds and paying the interest on such obligations and this Act shall be construed to this end and as not being in conflict with the provisions of any other law regulating the issuance of bonds. The election for the allocation and expenditure of such maintenance tax as provided herein may be called without the necessity of any petition but shall in all other respects be held in the manner provided by Article 2785, Revised Civil Statutes of Texas, 1925, as now or hereafter amended insofar as same may be applicable thereto. The ballots at such election shall have written or printed thereon the words:

“FOR the allocation and expenditure of school maintenance tax”; and  
“AGAINST the allocation and expenditure of school maintenance tax.”

Sec. 4. The provisions of this statute shall not preclude the use of any tax revenues for the same or different purposes as herein specified to the extent it is now lawful for such revenues to be used. Acts 1959, 56th Leg., p. 105, ch. 54.

Emergency. Effective March 31, 1959.

## 5. ADDITIONS AND CONSOLIDATIONS

Art. 2803d. Addition of territory to independent district of 30,220 scholastics; approval of board prior to election

On and after the effective date of this Act, no election shall be ordered for the purpose of determining whether or not territory shall be added to any Independent School District heretofore created having thirty thousand, two hundred and twenty (30,220) or more scholastics according to the last official scholastic census, unless prior to the ordering of said election, the proposed adding of said territory has been approved by a majority vote of the Board of Trustees or Board of Education of said Independent School District to which said territory is to be added. Acts 1959, 56th Leg., p. 87, ch. 44, § 1.

Emergency. Effective April 1, 1959.

Change of boundaries of independent districts, see arts. 2766, 2766a.

Title of Act:

An Act relating to the addition of territory to certain Independent School Districts; and declaring an emergency. Acts 1959, 56th Leg., p. 87, ch. 44.

Art. 2806d—1. Validating acts of county boards of school trustees in ordering elections for consolidation of independent school districts

Section 1. All acts of the county boards of school trustees in ordering elections for the consolidation of two (2) or more Independent School Districts in the same county are hereby validated in all respects, as though their consolidation had been duly and legally provided for and established in the first instance.

Sec. 2. All elections ordered and held in such Independent School Districts following such annexations, for the purpose of authorizing maintenance taxes, assumption of bonded indebtedness and voting of new construction bonds, and which elections resulted favorably in the levy of such taxes, the assumption of bonded indebtedness and the issuance of new construction bonds are hereby ratified, confirmed and validated. The fact that by inadvertence or otherwise the propositions submitted to the qualified electors at any such elections were not in compliance with existing statutes relating to the manner, form and method of submitting such propositions to the appropriate electors shall in nowise invalidate such elections, or the proceedings pertaining thereto or any bonds authorized thereby whether or not serial maturities of principal were set forth in such proposition, and such Independent School Districts are authorized to assess, levy and collect maintenance taxes at the rate so authorized by the voters, to levy taxes for the payment of bonded indebtedness thus assumed and to authorize, issue and sell new construction bonds so voted and to levy taxes for the payment of the principal of and interest on said new construction bonds.

Sec. 3. This Act shall not apply to any district which on the effective date of this Act is involved in litigation which questions the legality of the formation or creation of such District, or the validity of the election for the purpose of forming or creation of such District, or the validity of the acts of persons purporting to be the trustees thereof, or the validity of any elections subsequent to the purported formation or creation of such District for purpose of assumption of indebtedness or levy of special maintenance taxes; nor shall this Act have the effect of validating any of such Districts, elections, or proceedings in the event the Courts shall hold them to be illegal or invalid under the General Laws. Acts 1959, 56th Leg., p. 888, ch. 410.

Emergency. Effective May 30, 1959.

Validating school districts, see art. 2742i.

Validation of consolidation of school districts, see art. 2815g—10 et seq.

## 6. DISTRICTS IN LARGE COUNTIES

Art. 2815g—52. Validation of districts; acts of trustees; additions of territory; elections; bonds; boundaries; taxes; exceptions

Section 1. All school districts, including any independent school district controlled by a municipality and including common school districts, independent school districts, junior college districts, regional college districts, consolidated common school districts, consolidated independent school districts, rural high school districts, all county line school districts, including county line common school districts, county line independent school districts, county line rural high school districts, county line consolidated common school districts, county line consolidated independent school districts, and all other school districts, groups or annexations of whole districts, or parts of districts, whether established, organized,



and/or created by vote of the people residing in such districts, or proposed districts, or by action of the governing body of any such municipalities, or by action of the county school boards, or by action of the county judge, or by action of the Commissioners Courts, and whether created by General or Special Law in this state, and heretofore recognized by either state or county authorities as school districts, or hereby validated in all respects as though they had been duly and legally established in the first instance, and further providing that whenever a vacancy occurs on the board of trustees of a rural high school established under the provisions of Article 2922(a), (c), and (f) shall be filled for the unexpired term by appointment by the county board of trustees.

All acts of the county boards of trustees of any and all counties in rearranging, consolidating, grouping, annexing, changing, detaching and attaching of territory, or subdividing any and all such school districts, or increasing or decreasing the area thereof, or abolishing school districts in any school district of any kind, or in creating new districts out of parts of existing districts or otherwise, and all acts of the governing bodies of any such municipalities in annexing territories to such municipally controlled school districts, are hereby in all things validated.

All acts and orders of the county boards of school trustees of any and all counties in rearranging, annexing, detaching or attaching of territory, increasing or decreasing the area, or changing the boundaries of any and all junior college districts, are hereby in all things validated.

All acts and orders of the county boards of trustees of any and all counties in adding territory to any junior college district, which said college district was originally created with the same boundary lines as an independent school district and to which independent school district territory has been added, such added territory to such college district being the same that was added to said independent school district and making the boundary lines of such districts identical, are hereby in all things validated, regardless of whether such order or orders of the county board were enacted at the time of the addition of territory to the independent school district or subsequent thereto, and whether such orders were entered nunc pro tunc or otherwise. All elections for bonds, the levy and collection of taxes, and/or debt assumption ordered by the governing body of such junior college district and held over the entire enlarged or extended area, in which election a majority of the qualified voters owning taxable property within such junior college district as enlarged or extended and having duly rendered the same for taxation, are hereby in all things validated; and said governing body is hereby authorized to issue such bonds and levy such taxes, and the indebtedness so assumed is hereby declared to be the indebtedness of such enlarged junior college district.

All consolidations, or attempts at consolidation, of school districts after an election was held and a majority of the legally qualified voters in each such district voting in such election voted in favor of such consolidations, are hereby in all things validated and declared to be duly and legally consolidated or established as though they had been so consolidated or established in the first instance, and shall include, among others, such attempted consolidations where the election proceedings called for the consolidation of one or more common school districts and/or one or more independent school districts with an independent school district, but did not provide for the consolidation of each such common school district and/or independent school district with each other such district.

All acts of the county judges, and/or the Commissioners Courts, and/or the county boards of school trustees in converting or changing one type of

school district into another type of school district, are hereby in all things validated, and all elections called by such officers for such conversion or change, in which election a majority of the qualified voters voting therein voted in favor thereof, are hereby in all things validated, and all such converted or changed school districts are hereby in all things validated as though they had been legally established in the first instance.

All acts of the governing bodies of municipalities and/or of the boards of trustees of municipally controlled or assumed school districts and/or cities and towns constituting separate and independent school districts and/or extended municipal school districts, in ordering elections for the separation or divorcement of such schools and/or districts from municipal control, jurisdiction or authority, in which elections a majority of the qualified voters voting therein voted in favor of such separation or divorcement, are hereby in all things validated, and the school districts formed by such separation or divorcement are hereby in all things validated, and the organization and acts of the boards of trustees of any and all such districts are hereby in all things validated.

The boundary lines of any and all such school districts are hereby in all things validated. The names of any and all such school districts are hereby in all things validated.

All acts of the boards of trustees in such school districts or the governing bodies of such municipalities or the county judges or the Commissioners Courts ordering an election or elections, declaring the results of such elections, levying, attempting or purporting to levy taxes for and on behalf of such school districts, and all bonds issued and now outstanding, and all bonds heretofore voted but not issued, and all tax elections, bond elections, and bond assumption elections following such consolidation, annexation, grouping, attachment or detachment, conversion, change, etc., are hereby in all things validated. The fact that by inadvertence or oversight any act of the officers of any county or school district or municipality in the creation of any district was omitted, shall in nowise invalidate such district; and the fact that by inadvertence or oversight any act was omitted by the board of trustees of any such district or the county judge or the Commissioners Court or the governing body of any such municipality in ordering an election or elections, or in declaring the results thereof, or in levying the taxes for such districts, or in the issuance of the bonds of any such district, shall in nowise invalidate any of such proceedings or any bonds so voted or issued by such district. All revenue bonds issued and outstanding, and all revenue bonds authorized but not yet issued for and on behalf of school districts and all proceedings relating thereto are hereby in all things validated. All acts of the boards of trustees of school districts or the governing bodies of municipalities or the county judges or the Commissioners Courts in entering into leases of real estate or other property to such school districts and all such leases are hereby in all things validated; and all tax or revenue bonds issued or authorized to be issued to construct, erect, or purchase improvements for such school districts on such leased real estate are hereby in all things validated.

Sec. 2. All school districts mentioned in this Act are hereby authorized and empowered to levy, assess, and collect the same rate of tax, or not to exceed the rate of tax as heretofore authorized or attempted to be authorized by any act of the district or by any election of the taxpaying voters of said districts or by any Act whether General or Special, by the Legislature, or as is now being levied, assessed, and collected therein and heretofore authorized or attempted to be authorized by any act or acts of

said districts, or by any Act, whether General or Special, of the Legislature.

Sec. 3. This Act shall have no application to litigation pending in any court of competent jurisdiction in this state on the effective date hereof questioning the validity of any matters hereby validated if such litigation is ultimately determined against the validity of the same. Nor shall this Act apply to proceedings pending before the County Boards of Trustees, the State Commissioner of Education, or the State Board of Education on the effective date hereof questioning the validity of any matters hereby validated if such proceedings are ultimately determined against the validity of the same. Nor shall this Act apply to any district which has heretofore been declared invalid by a court of competent jurisdiction in this state or which may have been established and which was later returned to its original status. Acts 1959, 56th Leg., p. 767, ch. 348.

Emergency. Effective May 30, 1959.

Section 4 of the Act of 1959 contained a severability clause. Validating school districts, see also arts. 2742d, 2742i, 2744a.

## 7. JUNIOR COLLEGES

### Art. 2815h. Junior College Districts

#### Maintenance of Union Junior College by contiguous districts

Sec. 17. Two or more contiguous independent school districts or two or more contiguous common school districts, or a combination composed of one or more independent school districts, with one or more common school districts of contiguous territory, having a combined taxable wealth of not less than \$9,500,000.00 and having a scholastic population of not less than 7,000 the next preceding school year, and not less than 400 students in the last four years in the classified high schools of said district, may, by vote of the qualified voters of the said territory, establish and maintain a Union Junior College. Any county or combination of contiguous counties in the state, having a taxable property valuation of not less than \$9,500,000.00, and having a scholastic population of not less than 7,000 the next preceding school year, and not fewer than 400 students in the last 4 years of the classified high school or high schools within the proposed territory during the next preceding school year, may, by vote of the qualified voters of the proposed territory, establish and maintain a County or Joint County Junior College. As amended Acts 1957, 55th Leg., 1st C.S., p. 103, ch. 37, § 1; Acts 1959, 56th Leg., p. 694, ch. 317, § 1.

Emergency. Effective May 30, 1959.

#### Petition for election for Union Junior College

Sec. 18. Whenever it is proposed to establish a Union Junior College District, or a County Junior College District, as above provided, a petition praying for an election therefor, signed by not fewer than ten percent of the qualified taxpaying voters of the proposed territory, shall be presented to the County Board of Education. In case of a Union Junior College District the petition shall be signed by not fewer than ten percent of the qualified taxpaying voters of each of the school districts within the territory of the proposed Union Junior College District and shall be presented to the County Board of Education or Boards of Education of their respective counties if the territory encompasses more than one county. In case there is no County Board of Education, the petition shall be presented to the Commissioners Court or Commissioners Courts of the county

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or counties involved. In case of the Joint County Junior College District, the petition shall be signed by not fewer than ten percent of the qualified taxpaying voters of each of the proposed counties, and shall be presented to the Boards of Education of the counties included in the proposed district. In case there is no County Board of Education, the petition shall be presented to the Commissioners Court or the Commissioners Courts of the county or counties involved. Said petition may also incorporate therein a request for the proper authorities, in the event an election is ordered for the creation of such district, to submit at the same election the question of levying a tax for the construction and/or equipment and/or maintenance and/or purchase of school buildings and grounds for such district, in the event same is created, and/or for bonds to be issued for the construction and/or equipment of school buildings and/or the acquisition of sites therefor, and to provide for the interest and sinking fund for such bonds by levying of such taxes as will be necessary in this connection. It shall thereupon become the duty of the Board or Boards, or the Commissioners Court or courts, so petitioned to pass upon the legality of the petition and the genuineness of the same. It shall then be the duty of the Board or Boards of Education, the Commissioners Court or courts, as the case may be, to forward the petition to the State Board of Education. As amended Acts 1959, 56th Leg., p. 694, ch. 317, § 1.

Emergency. Effective May 30, 1959.

#### Determining desirability of Union Junior College

Sec. 19. It shall be the duty of the State Board of Education, with the advice of the State Superintendent of Public Instruction, to determine whether or not the conditions set forth in Section 17 have been complied with, and also whether, in consideration of the geographic location with respect to colleges already established, it is feasible and desirable to establish such Junior College District. In passing upon this question, it shall be the duty of the State Board of Education to consider the needs of the state, the welfare of the state as a whole, as well as the welfare of the community involved. The action of the State Board of Education shall be communicated, through the State Superintendent of Public Instruction, to the Commissioners Court or courts, as the case may be, together with an order of the State Board of Education, authorizing further procedure in the establishment of the Junior College District. If the State Board of Education approves the establishment of the Junior College District, it shall then be the duty of the Commissioners Court or Courts, as the case may be, to enter an order for an election to be held in the proposed territory within a time of not less than twenty days and not more than thirty days after such order is issued, to determine whether or not such Junior College District shall be created and formed; and in the event the petition for the creation of such Junior College was accompanied by a request to submit the question of levying of a tax for the construction and/or equipment and/or maintenance and/or purchase of school buildings and grounds for such district, in the event same is created, and/or bonds to be issued for the construction and/or equipment of school buildings and/or the acquisition of sites therefor, and to provide for the interest and sinking fund of such bonds by levying of such taxes as will be necessary in this connection, then such order shall also submit such question of levying a tax and/or issuing bonds according to the terms of said petition. Such order shall contain a description of the metes and bounds of such Junior College District to be formed, and shall fix the date of such election. A majority vote of the qualified voters in said district, voting in said election, shall determine the question submitted in said order. Said Com-

missioners Court or Courts, as the case may be, shall within ten days after holding such election, make a canvass of the returns and declare the results of the election. They shall enter an order on the minutes of the Court or Courts as to the results. In the case of a Joint County Junior College District, or a Union Junior College District, the election shall, by mutual agreement of the Court or Courts, be held on the same day. As amended Acts 1959, 56th Leg., p. 694, ch. 317, § 1.

Emergency. Effective May 30, 1959.

Section 2 of the amendatory Act of 1959 repealed all conflicting laws and parts of laws to the extent of such conflict only.

#### Annexation of districts to Junior College District

Sec. 21. An Independent School District or Districts, a Common School District or Districts may be annexed to an adjacent Junior College District for Junior College purposes only, by an election upon petition of five percent (5%) of the property tax paying voters in such district or districts seeking to be annexed, said petition to be presented to the County Board of Education or to the County Commissioners Court of the county, in the case there is no County Board of Education, together with a certified copy of an order by the governing board of the Junior College District approving the proposed annexation of such district or districts to the Junior College District for Junior College purposes only. The County Board of Education or the Commissioners Court shall issue an order for an election to be held in such school district, said election to be held not less than twenty (20) days nor more than thirty (30) days from date of said order and shall give notice of the date of such election by posting notices of such election. Only those legally qualified voters residing in such school district shall be permitted to vote. The County Board of Education or Commissioners Court shall at a meeting of not less than five (5) days after said election canvass the returns of such election and if the votes cast therein show a majority in favor such annexation then the Board of Education or Commissioners Court shall declare such school district annexed to the Junior College District for Junior College purposes only, and said County Board or Commissioners Court shall cause certified copies of such order to be transmitted to the board of trustees of said Junior College District and such board of trustees shall make orders concurring in such order and shall re-define the boundary lines of said Junior College District as enlarged and extended and cause same to be recorded on the minutes of the board of trustees of said Junior College District.

Whenever a school district or districts have been annexed to a Junior College District for Junior College purposes only in the manner provided by this Act, then, within thirty (30) days after such annexation the governing board of the Junior College District shall, without the prerequisite of the filing of any petition, order an election to be held in the Junior College District as enlarged by the annexation on the question of the levy and collection of taxes for the support and maintenance of such Junior College District as enlarged under the provisions of Chapter 70, Acts of the 50th Legislature, 1947. If said Junior College District prior to the annexation issued bonds, any of which bonds are outstanding at the time of such annexation, then the question of the assumption of such bonded indebtedness by said Junior College District as enlarged and the levy and collection of taxes in payment thereof shall also be submitted at the same election. The election for the levy and collection of said taxes and the assumption of said bonds shall be in accordance with the provisions of the General Laws relative to Independent School Dis-

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

tricts, provided, however, that no petition shall be necessary. As amended Acts 1959, 56th Leg., p. 207, ch. 118, § 1.

Emergency. Effective April 29, 1959.

Section 2 of the amendatory Act of 1959 contained a severability clause.

Jurisdiction of Central Education Agency, State Board of Education and State Commission of Education over public junior colleges, see art. 2815k—2.

### **Art. 2815h—9. Purchase of additional lands after 30 per cent increase in student enrollment**

#### **Authority to purchase lands**

Section 1. The governing board of any Junior College District heretofore or hereafter organized under the laws of the State of Texas which has had, or may hereafter have, an increase of thirty percent (30%) or more in full-time student equivalent enrollment in any scholastic year as compared with the previous scholastic year is hereby authorized and empowered to purchase improved or unimproved lands adjacent or contiguous to lands owned by such District if deemed appropriate by such governing body, provided such purchase is made within five (5) years after such increase in enrollment.

#### **Tuition or registration fees**

Sec. 2. Any such governing board is authorized to fix tuition or registration fees to be charged students in amounts deemed to be reasonable by such governing board, taking into consideration the present and probable future cost of providing the facilities of the institution or institutions under such conditions of rapid growth, and the advantages to be derived therefrom by the students attending, and to attend.

#### **Issuance of notes**

Sec. 3. Any such governing board is authorized and empowered to issue its notes from time to time and in such amounts as it shall consider necessary or appropriate, in a total amount not to exceed One Hundred Fifty Thousand Dollars (\$150,000.00), for the purpose of purchasing lands as herein authorized. All such notes may be made redeemable before maturity, or at the option of such governing board, at such price or prices and under such terms and conditions as may be fixed by the board prior to the issuance of the note or notes. All such notes shall mature in not less than ten (10) years from their respective dates, may bear interest at not to exceed six percent (6%) per annum, and may not be sold at less than par and accrued interest.

#### **Pledge of tuition and registration fees**

Sec. 4. Any such governing board is authorized and empowered to irrevocably pledge not to exceed Thirty-five Dollars (\$35.00) of the tuition and registration fees to be collected from each student to the payment of the interest on and the principal of notes authorized to be issued hereunder, and to enter into such agreements regarding the imposition of sufficient tuition and registration fees and the collection, pledging and disposition of same as it may deem appropriate, providing that the amounts so pledged shall be in addition to and shall not be a part of the minimum tuition and registration fees now required by law to be collected from each student.

#### **Notes as special obligations**

Sec. 5. The notes authorized to be issued hereunder shall be special obligations of the governing board issuing them and shall be payable sole-

ly from a pledge of tuition and registration fees as authorized herein, or from any other source or fund now or hereafter permitted by law to be used for such purposes, and none of the bonds or notes authorized to be issued hereunder shall be an indebtedness of the State of Texas.

**Previous pledges**

Sec. 6. Any pledge of tuition and registration fees made under the terms of this Act shall be subject to any previous pledge thereof, but the existence of any such previous pledge shall not prevent the making of the subsequent and inferior pledge, unless such action is prohibited under the resolution or resolutions authorizing the prior obligations.

**Form and conditions of notes**

Sec. 7. Subject to the restrictions contained in this Act each such governing board is given complete discretion in fixing the form, conditions, and details of such notes, and such notes may be refunded or otherwise refinanced whenever said governing board deems such action to be necessary or appropriate. Acts 1959, 56th Leg., p. 404, ch. 185.

Emergency. Effective May 19, 1959.

Section 8 of the Act of 1959 contained a severability clause. Section 9 provided: "This Act shall not repeal any Statute now in effect but shall be cumulative of all other Statutes pertaining to any of the institutions affected by this Act, and shall not modify or abridge any powers now held by any of said institutions; provided,

however, that to the extent that the provisions of this Act may be in conflict with the provisions of any other law, the provisions of this Act shall take precedence and shall prevail."

Disannexation of territory, see art. 2815p.

Extension of boundaries of junior college districts, see art. 2815s.

**Art. 2815k—2. Jurisdiction of Central Education Agency, State Board of Education and State Commission of Education over public junior colleges**

Section 1. The Central Education Agency shall exercise, under the Acts of the Legislature, general control of the Public Junior Colleges of this State. All authority not vested by this Act or other laws of the State in the Central Education Agency or its component parts, is reserved and retained locally in each respective Public Junior College District or governing board of each Public Junior College as provided in the laws applicable thereto.

Sec. 2. The State Board of Education shall have the responsibility for adopting policies, enacting regulations and establishing general rules necessary for carrying out the duties with respect to Public Junior Colleges placed upon it or upon the Central Education Agency by the Legislature. The State Commissioner of Education shall be responsible for carrying out such policies and enforcing such rules and regulations.

Sec. 3. The State Board of Education, with the advice and assistance of the State Commissioner of Education, shall have authority to:

(a) Authorize the creation of Public Junior College Districts as provided in the laws pertaining thereto. In the exercise of this authority the State Board of Education shall give particular attention to the need for a Public Junior College in the proposed district, and the ability of the district to provide adequate local financial support;

(b) Dissolve any Public Junior College District which has failed to establish and maintain a Junior College therein within three (3) years from the date of its authorization;

(c) Maintain a Public Junior College Division within the State Department of Education. The State Commissioner of Education shall have the authority to appoint, subject to the confirmation of the State Board of

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

Education, an Assistant Commissioner of Education for Public Junior Colleges, and to prescribe his duties and functions;

(d) Adopt standards for the operation of Public Junior Colleges and prescribe the rules and regulations therefor;

(e) Require of each Public Junior College such reports as the Central Education Agency may deem necessary in accordance with the rules and regulations issued by the Agency; and

(f) Establish advisory commissions composed of representatives of Public Junior Colleges and other citizens of the State to provide advice and counsel to the Central Education Agency with respect to Public Junior Colleges.

Sec. 4. It shall be the duty of the Commissioner of Education to file with the State Auditor on or before the 1st day of October of each year a list of the Public Junior Colleges in this State. The Commissioner shall certify the names of these Colleges that have complied with the standards, rules and regulations as prescribed by the State Board of Education. Only these Colleges which are so certified shall be eligible for and may receive any appropriation made by the Legislature for Public Junior Colleges. Acts 1959, 56th Leg., p. 283, ch. 160.

Emergency. Effective May 11, 1959.

Title of Act:

Duties of State Board of Education, see art. 2654—3.

Functions of Central Education Agency, see art. 2654—1.

Functions of State Commissioner of Education, see art. 2654—6.

Junior college districts, see art. 2815h.

An Act relating to the responsibilities, powers, and duties of the Central Education Agency, State Board of Education and State Commission of Education with respect to Public Junior Colleges; and declaring an emergency. Acts 1959, 56th Leg., p. 283, ch. 160.

#### Art. 2815n. Trustees of junior college districts to which other districts annexed

Joint elections of governing bodies of school districts, see art. 2746c.

#### Art. 2815o—1a. Validation of organization of boards of regents

Section 1. This Act shall be applicable to any Board of Regents appointed and organized pursuant to the provisions of Chapter 361, Acts 1951, Fifty-second Legislature of Texas,<sup>1</sup> and in which the management, control and operation of a Junior College is vested.

Sec. 2. All such Boards of Regents, their appointment and organization and all acts of such Boards taken in the management, control and operation of such Junior College Districts and in ordering elections, declaring the results of such elections, levying, attempting or purporting to levy taxes for and on behalf of such Junior College Districts and all bonds heretofore authorized by majority vote of the lawful electorate of such Districts, but unissued are hereby in all things validated. The fact that by inadvertence or oversight the procedure followed in the appointment of such Boards failed to comply with the law in reference thereto shall in no wise invalidate such boards or any action taken by them.

Sec. 3. This Act shall not apply to any such Board or District which is now or which within thirty (30) days from the effective date hereof becomes involved in litigation in any court of competent jurisdiction in this State, in which the validity of the organization of such Boards or the proceedings taken by them are attacked. Acts 1959, 56th Leg., p. 353, ch. 170.

<sup>1</sup> Article 2815o—1.

Emergency. Effective May 12, 1959.



**Title of Act:**

An Act validating the organization of Boards of Regents of Junior College Districts and actions taken by such Boards

subsequent to organization; making Act inapplicable to such Boards now involved in litigation; and declaring an emergency. Acts 1959, 56th Leg., p. 353, ch. 170.

**Art. 2815j. Disannexation of territory**

Purchase of additional lands after 30 per cent increase in student enrollment, see art. 2815h—9.

**Art. 2815s. Extension of boundaries of junior college district coextensive with independent district**

Purchase of additional lands after 30 per cent increase in student enrollment, see art. 2815h—9.

**8. REGIONAL COLLEGE DISTRICTS**

**Art. 2815t—1. Power of eminent domain**

Section 1. The power of eminent domain is hereby conferred on Regional College Districts established under and pursuant to the provisions of Acts, 1951, Fifty-second Legislature, page 438, Chapter 272, being Article 2815t of Title 49, Vernon's Texas Civil Statutes, for the purpose of acquiring buildings, lands for building or campus sites, or other property determined by the Boards of Regents of such districts to be needed to carry out the authorized functions of such districts.

Sec. 2. Said power of eminent domain shall be exercised in the manner provided by Title 52 of the Revised Civil Statutes of Texas, 1925. Acts 1959, 56th Leg., p. 998, ch. 466.

Emergency. Effective May 30, 1959.

**Title of Act:**

An Act conferring upon Regional College Districts the power of eminent domain for the purpose of acquiring property for

their needs; prescribing the manner of exercising such power; and declaring an emergency. Acts 1959, 56th Leg., p. 998, ch. 466.

**CHAPTER FIFTEEN—SCHOOL FUNDS**

**Art.**

**2827b.** Televising and/or broadcasting of board meetings in counties of 800,000 or more; expenditures [New].

**Art. 2827b. Televising and/or broadcasting of board meetings in counties of 800,000 or more; expenditures**

Section 1. In addition to all other powers granted or authorized by law, the Board of Trustees of any independent school district located in a county having a population of eight hundred thousand (800,000) or more, according to the last preceding Federal Census and having a scholastic enumeration of one hundred thousand (100,000) or more, according to the last preceding scholastic enumeration shall have power and authority to make expenditures from local school funds of the district for the purpose of televising and/or broadcasting their meetings.

Sec. 2. This Act shall be cumulative of all laws of this state relating to the purposes for which public free school funds may be expended. Acts 1959, 56th Leg., p. 252, ch. 146.

Emergency. Effective May 7, 1959.

**Art. 2832. 2771 Districts of more than 150 scholastics**

In any independent district of more than one hundred and fifty (150) scholastics, whether it be in a city which has assumed control of the schools within its limits, or a corporation for school purposes only, and whether organized under General Law or created by Special Act, the treasurer of the school fund shall be that person or corporation who offers satisfactory bond and the best bid of interest on the average daily balances or time deposits for the privilege of acting as such treasurer. The treasurer when thus selected shall serve for a term of two (2) years and until his successor shall have been duly selected and qualified and he shall be required to give bond in an amount equal to the estimated amount of the total receipts coming annually into his hands, when such bond is a personal bond; provided, that when a bond is executed by a surety company or is a bond other than a personal bond, such bond shall be in an amount equal to the highest estimated daily balance for the current biennium, to be determined by the governing body of such school district; provided, further that such governing body may, in lieu of the bond herein authorized, accept a deposit of approved securities, which securities may include bonds of the United States, or of this State, or of any county, city, town or independent school district in the State, or Anticipation Tax Warrants and/or Anticipation Tax Notes legally issued by the governing body of such school district, which shall be deposited as such governing body may direct, in an amount sufficient to adequately protect the funds of such school district in the hands of the selected treasurer.

Provided, however, that no premium on any bonds shall be paid out of the funds of any said district or corporation. Said bond shall be payable to the president of the board and his successors in office, conditioned for the faithful discharge of the treasurer's duties and the payment of the funds received by him upon the draft of the president of the school board drawn upon order, duly entered, of the board of trustees. Said bond shall be further conditioned that the treasurer shall safely keep and faithfully disburse all funds coming into his hands as treasurer, and shall faithfully pay over to his successor all balances remaining in his hands. It shall be approved by the school board and the State Department of Education shall be notified of the treasurer by the president of the school board filing a copy of said bond in said department. If the custodian of the funds of any independent school district to which this Article applies has heretofore been designated as a depository, instead of a treasurer, the governing body of any such district may continue to use the name depository and this Article shall govern to the same extent as if the name treasurer were used. As amended Acts 1959, 56th Leg., p. 94, ch. 48, § 1.

Emergency. Effective April 2, 1959.

**CHAPTER SIXTEEN—FREE TEXTBOOKS****2. DISTRIBUTION OF BOOKS**

Art.

2876k. Braille and large type textbooks  
for blind scholastics [New].

**1. TEXTBOOK COMMISSION****Art. 2843. Uniform system**

The State Board of Education shall select and adopt a multiple list of textbooks for the elementary grades of the public free schools of Texas,

said multiple list to consist of not fewer than three (3) nor more than five (5) textbooks on the following subjects: spelling, reading (basal and supplementary), English language and grammar, geography, arithmetic, physiology-hygiene, civil government, driver education and safety, vocal music, elementary science, history of the United States (in which the construction placed on the Federal Constitution by the fathers of the Confederacy shall be fairly represented), history of Texas, agriculture, a system of writing books, a system of drawing books, and may also, if deemed necessary, adopt a geography of Texas and a civil government of Texas; provided that none of said books shall contain anything of a partisan or sectarian character, and that nothing in this Act shall be construed to prevent the teaching of German, Bohemian, Spanish, French, Latin or Greek in any of the public schools, providing that textbooks on additional subjects may be supplied when such subjects have been approved for elementary schools by the State Department of Education.

Said State Board of Education shall also adopt a multiple list of books for use in the high schools of the state, said multiple list including not fewer than three (3) nor more than five (5) textbooks on the following subjects: algebra, plane geometry, solid geometry, general science, biology, physics, chemistry, a one-year world history, American history, Latin, Spanish, homemaking, physical geography, driver education and safety, vocal music, English composition, literature, (including American literature and English literature), shop courses, physiology, the German, Czech, and French languages, agriculture, civil government, commercial arithmetic, bookkeeping, typewriting, shorthand and journalism. Free textbooks shall be provided for all other courses which have been accredited by the State Accrediting Committee and for which as many as ten thousand (10,000) pupils are enrolled according to reports from high schools to the Textbook Division of the State Department of Education which shall be taken annually at the close of each school year.

In each subject of the elementary and high school grades, one or more of the several textbooks of each multiple list adopted may be selected by local school officials; but when such is or are selected from the multiple lists, they shall be continued in use in that school system for the entire period of the adoption or for a minimum period of not less than five (5) years, providing that school officials for each separate independent district and each system of county schools or other schools subject to supervision by county boards of education shall select the same book or books for all of its schools. Supplementary readers for pre-primer, primer, first, second, and third grades shall be distributed on a quota of not more than three hundred percent (300%) of the enrollment for each of the grades to which the book is assigned. Supplementary readers for grades four (4) through eight (8) shall be distributed on a quota basis not in excess of two hundred percent (200%) of the grade enrollment to which the books are assigned. All other books shall be supplied on the basis of one book for each pupil enrolled in the subject for which the book is adopted and not to exceed the total enrollment for the subject plus the teachers' copies.

Specific rules as to the manner of selection for all books on the multiple lists provided for in this Act shall be made by the State Board of Education.

The State Board of Education, as herein provided for, shall adopt textbooks in accordance with the provisions of this Act for every public free school in the state and no public free school in the state shall use any textbook unless same has been previously adopted and approved by this Board, and the Board shall prescribe rules under which all textbooks

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

adopted and approved shall be introduced or used by or in the public schools of the state.

In the event as many as three suitable textbooks are not offered for adoption on any one subject, the Board may select fewer than three (3) textbooks.

Existing contracts shall not be affected by any adoptions made under this Act. As amended Acts 1959, 56th Leg., p. 672, ch. 310, § 1.

Emergency. Effective May 30, 1959.

## 2. DISTRIBUTION OF BOOKS

### Art. 2876k. Braille and large type textbooks for blind scholastics

Section 1. The State Board of Education is hereby authorized to acquire, purchase and contract for, with or without bid, subject to rules and regulations adopted by the Board, books published in Braille and Large Type books recommended as suitable and usable as textbooks for the education of the blind scholastics, hereinafter defined, in the public school systems of this state in grades one to twelve inclusive. The Board may also enter into agreements providing for the acceptance, requisition and distribution of books and instructional aids pursuant to the Public Law 922, 84th Congress,<sup>1</sup> or as amended.

Sec. 2. Such Braille and Large Type textbooks and teacher copies requisitioned and purchased by the Board pursuant to contract signed by the Chairman thereof and the costs of administration thereof shall be paid for out of the Textbook Fund of this state as are textbooks for the seeing. All such books acquired by the Board shall be distributed by the Central Education Agency pursuant to rules and regulations recommended by the State Commissioner of Education and adopted by the Board.

Sec. 3. All Braille and Large Type books available and submitted on invitation shall be examined by the State Textbook Committee for its recommendation as to their suitability and usability as textbooks for the blind in the public school systems.

Sec. 4. It is the intention of the Legislature that such Braille and Large Type books may be obtained and distributed pursuant to rules and regulations adopted by the State Board of Education as it may act on the recommendations of the State Textbook Committee and the State Commissioner of Education. All such books so acquired shall be the property of the State of Texas, to be controlled, distributed, and disposed of pursuant to Board regulations.

Sec. 5. For the purposes of this Act, a pupil is considered blind if his vision comes within the following definition of blindness: Central visual acuity of 20 over 200 or less in the better eye with correcting glasses, or a peripheral field so contracted that the widest diameter of such field subtends an angular distance no greater than 20 degrees. Acts 1957, 55th Leg., p. 762, ch. 315, as amended Acts 1959, 56th Leg., p. 650, ch. 301, § 1.

<sup>1</sup> 20 U.S.C.A. §§ 101, 102.

Emergency. Effective May 30, 1959.

## CHAPTER NINETEEN—MISCELLANEOUS PROVISIONS

Art.

2919h. Insuring participants in inter-school athletic contests [New].

## Art. 2909c. Construction, acquisition, improvement and equipment of buildings by certain colleges and universities

## Refunding or refinancing bonds or notes

Sec. 8(a). Any bonds or notes at any time issued by any such governing board under any Texas Statute, including, without limitation, Chapter 5, Acts of 1934, Forty-third Legislature of Texas, Second Called Session, as amended (Vernon's Article 2603c), and payable from any part of the revenues of any revenue producing building, structure, facility, operation or property or any part of any use fees in connection therewith, may be refunded or otherwise refinanced by such governing board pursuant to the provisions of this Act, and in such case all of the provisions of this Act shall be fully applicable to such refunding bonds or notes the same as if the bonds or notes being refunded had been issued originally pursuant to this Act. In refunding or otherwise refinancing any such bonds or notes such governing board may, in the same authorizing proceedings, also refund or refinance any bonds or notes issued pursuant to this Act and combine all said refunding bonds or notes and any other additional new bonds or notes to be issued pursuant to this Act into one or more issues or series, and may provide for the subsequent issuance of additional parity bonds or notes, under such terms and conditions as may be set forth in said authorizing proceedings. Added Acts 1959, 56th Leg., p. 185, ch. 104, § 1.

Emergency. Effective April 28, 1959.

## Art. 2919d. Southern States Regional Compact

## Text of compact

Sec. 2. The above mentioned regional education compact, as amended, reads as follows:

## THE REGIONAL COMPACT

(As amended)

WHEREAS, The States who are parties hereto have during the past several years, conducted careful investigation looking toward the establishment and maintenance of jointly owned and operated regional educational institutions in the Southern States in the professional, technological, scientific, literary and other fields, so as to provide greater educational advantages and facilities for the citizens of the several States who reside within such region; and

WHEREAS, Meharry Medical College of Nashville, Tennessee, has proposed that its lands, buildings, equipment, and the net income from its endowment be turned over to the Southern States, or to an agency acting in their behalf, to be operated as a regional institution for medical, dental and nursing education upon terms and conditions to be hereafter agreed upon between the Southern States and Meharry Medical College; which proposal, because of the present financial condition of the institution has been approved by the said States who are parties hereto; and

WHEREAS, The said States desire to enter into a compact with each other providing for the planning and establishment of regional educational facilities; now,

THEREFORE, In consideration of the mutual agreements, covenants and obligations assumed by the respective States who are parties hereto (hereinafter referred to as "States"), the said several States do hereby form a geographical district or region consisting of the areas lying within the boundaries of the contracting States, which, for the purpose of this Compact, shall constitute an area for regional education supported by public funds derived from taxation by the constituent States and derived from other sources for the establishment, acquisition, operation and maintenance of regional educational schools and institutions, for the benefit of citizens of the respective States residing within the region so established, as may be determined from time to time in accordance with the terms and provisions of this Compact.

The States do further hereby establish and create a joint agency which shall be known as the Board of Control for Southern Regional Education (hereinafter referred to as the "Board"), the members of which Board shall consist of the Governor of each State, ex officio, and four additional citizens of each State to be appointed by the Governor thereof, at least one of whom shall be selected from the field of education and at least one of whom shall be a member of the Legislature of that State. The Governor shall continue as a member of the Board during his tenure of office as Governor of the State but the members of the Board appointed by the Governor shall hold office for a period of four (4) years except that in the original appointments one Board member so appointed by the Governor shall be designated at the time of his appointment to serve an initial term of two (2) years, one Board member to serve an initial term of three (3) years, and the remaining Board member to serve the full term of four (4) years, but thereafter the successor of each appointed Board member shall serve the full term of four (4) years. Vacancies on the Board caused by death, resignation, refusal or inability to serve, shall be filled by appointment by the Governor for the unexpired portion of the term. The officers of the Board shall be a Chairman, a Vice-Chairman, a Secretary, a Treasurer, and such additional officers as may be created by the Board from time to time. The Board shall meet annually and officers shall be elected to hold office until the next annual meeting. The Board shall have the right to formulate and establish by-laws not inconsistent with the provisions of this Compact to govern its own actions in the performance of the duties delegated to it, including the right to create and appoint an Executive Committee and a Finance Committee with such powers and authority as the Board may delegate to them from time to time. The Board may, within its discretion, elect as its Chairman a person who is not a member of the Board, provided such person resides within a signatory State; and upon such election such person shall become a member of the Board with all the rights and privileges of such membership.

It shall be the duty of the Board to submit plans and recommendations to the States from time to time for their approval and adoption by appropriate legislative action for the development, establishment, acquisition, operation and maintenance of educational schools and institutions within the geographical limits of the regional area of the States, of such character and type and for such educational purposes, professional, technological, scientific, literary, or otherwise, as they may deem and determine to be proper, necessary or advisable. Title to all such educational institutions when so established by appropriate legislative actions of the States, and to all properties and facilities used in connection therewith,

shall be vested in said Board as the agency of and for the use and benefit of the said States and citizens thereof; and all such educational institutions shall be operated, maintained and financed in the manner herein set out, subject to any provisions or limitations which may be contained in the legislative Acts of the State authorizing the creation, establishment and operation of such educational institutions.

In addition to the power and authority heretofore granted, the Board shall have the power to enter into such agreements or arrangements with any of the States and with educational institutions or agencies, as may be required in the judgment of the Board, to provide adequate services and facilities for the graduate, professional, and technical education for the benefit of the citizens of the respective States residing within the region, and such additional and general power and authority as may be vested in the Board from time to time by legislative enactment of the said States.

Any two (2) or more States who are parties of this Compact shall have the right to enter into supplemental agreements providing for the establishment, financing and operation of regional educational institutions for the benefit of citizens residing within an area which constitutes a portion of the general region herein created, such institutions to be financed exclusively by such States and to be controlled exclusively by the members of the Board representing such States, provided such agreement is submitted to and approved by the Board prior to the establishment of such institutions.

Each State agrees that, when authorized by the Legislature, it will from time to time make available and pay over to said Board such funds as may be required for the establishment, acquisition, operation and maintenance of such regional educational institutions as may be authorized by the States under the terms of this Compact, the contribution of each State at all times to be in the proportion that its population bears to the total combined population of the States who are parties hereto as shown from time to time by the most recent official published report of the Bureau of the Census of the United States of America; or upon such other basis as may be agreed upon.

This Compact shall not take effect or be binding upon any State unless and until it shall be approved by proper legislative action of as many as six (6) or more of the States whose Governors have subscribed hereto within a period of eighteen (18) months from the date hereof. When and if six (6) or more States shall have given legislative approval to this Compact within said eighteen (18) months period, it shall be and become binding upon such six (6) or more States sixty (60) days after the date of legislative approval by the sixth State, and the Governors of such six (6) or more States shall forthwith name the members of the Board from their States as hereinabove set out, and the Board shall then meet on call of the Governor of any State approving this Compact, at which time the Board shall elect officers, adopt by-laws, appoint committees and otherwise fully organize. Other States whose names are subscribed hereto shall thereafter become parties hereto upon approval of this Compact by legislative action within two (2) years from the date hereof, upon such conditions as may be agreed upon at the time. Provided, however, that with respect to any State whose constitution may require amendment in order to permit legislative approval of the Compact, such State or States shall become parties hereto upon approval of this Compact by legislative action within seven (7) years from the date hereof, upon such conditions as may be agreed upon at the time.

After becoming effective this Compact shall thereafter continue without limitation of time; provided, however, that it may be terminated at any

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

time by unanimous action of the States; and provided further that any State may withdraw from this Compact if such withdrawal is approved by its Legislature, such withdrawal to become effective two (2) years after written notice thereof to the Board accompanied by a certified copy of the requisite legislative action, but such withdrawal shall not relieve the withdrawing State from its obligations hereunder accruing up to the effective date of such withdrawal. Any State so withdrawing shall ipso facto cease to have any claim to or ownership of any of the property held or vested in the Board or to any of the funds of the Board held under the terms of this Compact.

If any State shall at any time become in default in the performance of any of its obligations assumed herein or with respect to any obligation imposed upon said State as authorized by and in compliance with the terms and provisions of this Compact, all rights, privileges and benefits of such defaulting State, its members on the Board and its citizens, shall ipso facto be and become suspended from and after the date of such default. Unless such default shall be remedied and made good within a period of one year immediately following the date of such default this Compact may be terminated with respect to such defaulting State by an affirmative vote of three-fourths ( $\frac{3}{4}$ ) of the members of the Board (exclusive of the members representing the State in default), from and after which time such State shall cease to be a party to this Compact and shall have no further claim to or ownership of any of the property held by or vested in the Board or to any of the funds of the Board held under the terms of this Compact, but such termination shall in no manner release such defaulting State from any accrued obligation or otherwise affect this Compact or the rights, duties, privileges or obligations of the remaining States thereunder.

IN WITNESS WHEREOF this Compact has been approved and signed by Governors of the several States, subject to the approval of their respective Legislatures in the manner hereinabove set out, as of the 8th day of February, 1948.

STATE OF FLORIDA  
By Millard F. Caldwell  
Governor

STATE OF MARYLAND  
By Wm. Preston Lane, Jr.  
Governor

STATE OF GEORGIA  
By M. E. Thompson  
Governor

STATE OF LOUISIANA  
By J. H. Davis  
Governor

STATE OF ALABAMA  
By James E. Folsom  
Governor

STATE OF MISSISSIPPI  
By F. L. Wright  
Governor

STATE OF TENNESSEE  
By Jim McCord  
Governor



## STATE OF ARKANSAS

By Ben Laney  
Governor

## COMMONWEALTH OF VIRGINIA

By William M. Tuck  
Governor

## STATE OF NORTH CAROLINA

By R. Gregg Cherry  
Governor

## STATE OF SOUTH CAROLINA

By J. Strom Thurmond  
Governor

## STATE OF TEXAS

By Beauford H. Jester  
Governor

## STATE OF OKLAHOMA

By Roy J. Turner  
Governor

## STATE OF WEST VIRGINIA

By Clarence W. Meadows  
Governor

As amended Acts 1959, 56th Leg., p. 1077, ch. 491, § 1.

Effective as shown in § 2.

Section 2 of the amendatory Act of 1959, provided: "This amendment will take effect when eight (8) or more of the States party to the Compact have given legislative approval to this amendment."

The act of 1951 contained the following preamble:

"WHEREAS, On February 8, 1948, fourteen Southern States, through their Governors, entered a written compact relative to the development and maintenance of regional education services and schools in the Southern States in the professional, technological, scientific, literary, and other fields, so as to provide greater educational advantages and facilities for the citizens residing in the Southern region, which compact has since been approved by thirteen of the fourteen original compacting

States, Texas being the only State which has not availed itself of the benefits of the compact; and

"WHEREAS, Though participation in the regional education program would not relieve the State of Texas of its duty to provide equal educational opportunity to all its citizens, Texas citizens would receive inestimable educational benefits since greater educational facilities would be available to Texas Negro students as well as to other citizens of Texas without the tremendous expenditure to the State of Texas that the duplication of these facilities in Texas would involve, and approval of this compact would supplement importantly the facilities of higher education available to Texas students; now, therefore,"

## Art. 2919e—2. Texas Commission on Higher Education

## Regulation of parachuting activities

Sec. 18. The Commission shall prescribe the rules to govern parachuting activities of parachuting clubs, the membership of which consists of students attending state educational institutions of collegiate rank. Added Acts 1959, 56th Leg., p. 1067, ch. 488, § 1.

Emergency. Effective June 1, 1959.

## Art. 2919h. Insuring participants in interschool athletic contests

Section 1. The Board of Trustees of each and all school districts in Texas, when in the opinion of the Board the financial condition of the school district will permit, shall have the authority to insure the students who participate in interschool athletic competition for bodily injuries sus-

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

tained by said students while under training for or engaging in said competition. The amount of insurance obtained shall be in keeping with the financial condition of the school district and shall not exceed the amount, which in the opinion of the Board, is reasonably necessary to afford adequate medical treatment of students so injured. The insurance herein authorized shall in all cases be obtained from some reliable insurance company authorized to do business in Texas and shall be on forms approved by the Insurance Commission of Texas.

Sec. 2. Premium payments for the insurance herein authorized shall only be paid from receipts accruing to the school from admission charges to school athletic contests or other receipts from said contests, and from no other fund or funds.

Sec. 3. Nothing herein contained shall be construed as placing any legal liability upon school districts or their officers, agents or employees, for such injuries or of rendering it mandatory that local school boards carry such insurance. The Legislature does declare, however, that the costs of such insurance, where provided hereunder, is a legitimate part of the total costs of the athletic programs of the school districts of the state. Acts 1959, 56th Leg., p. 215, ch. 124.

Emergency. Effective April 29, 1959.

## CHAPTER TWENTY—TEACHERS' RETIREMENT

Art.  
2922—1b. Re-employment of retired teachers [New].

Art.  
2922—1c. Deposits of members who have performed military duty; membership; former service credit [New].

### Art. 2922—1. Teachers' Retirement System

#### Disability Benefits

##### Sec. 6.

2(b) Should a disability beneficiary under the age of sixty (60) years be restored to active service, his retirement allowance shall cease, he shall again become a member of the Retirement System, and there shall be transferred from the Retired Reserve Fund to his individual account in the Teacher Savings Fund the sum which was in his account before his disability retirement, less the aggregate of disability benefits paid out to such person. Upon restoration to membership, any prior service certificate on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect, and in addition, upon his subsequent retirement he shall be credited with all his membership service. No member eligible for service retirement without reduction shall be allowed to retire on a disability allowance. As amended Acts 1959, 56th Leg., p. 843, ch. 381, § 1.

Emergency. Effective June 1, 1959.

#### Method of Financing

##### Sec. 10.

##### 5. Expense Fund.

(b) Each member shall pay with the first payment to the Teacher Savings Fund each year, and in addition thereto, the sum of Three (\$3.00) Dollars which amount shall be credited to the Expense Fund. Said payments for the Expense Fund shall be made to the State Board of Trustees

in the same way as payments to the Teacher Savings Fund shall be made, as provided for in this Act; provided however, that if said payment for the Expense Fund of any member is not made with said first payment of said member, the State Board of Trustees may deduct the amount of the payment for the Expense Fund from said first payment of said member. As amended Acts 1959, 56th Leg., p. 206, ch. 117, § 1.

Emergency. Effective April 29, 1959.

Service credit based on employment as officer or employee of state for retirement benefits under Teachers' Retirement System, see article 6228a—2; Const. art. 16, § 63.

Art. 2922—1b. Re-employment of retired teachers

Any person retired for service under the Teacher's Retirement System of Texas and receiving benefits under the system may be employed, on a part-time basis only, as a substitute teacher in the public schools or in fully or partly state supported institutions of higher education, as the case may be, for a period not to exceed sixty (60) days in any single school year. The employment of the retired person does not affect the existing benefits of the person under the retirement system, including the right to receive retirement allowance. The substitute employment does not entitle the person to additional creditable service under the retirement system. Acts 1959, 56th Leg., p. 53, ch. 28, § 1.

Effective 90 days after May 12, 1959, date of adjournment.

Creditable service for teacher retirement, see art. 2922—1, § 4.

Title of Act:

An Act concerning the re-employment of retired teachers receiving benefits under the Teacher's Retirement System of Texas; and declaring an emergency. Acts 1959, 56th Leg., p. 53, ch. 28.

Art. 2922—1c. Deposits of members who have performed military duty; membership former service credit

Any person who, heretofore, while a member of the Retirement System, performed one or more years of military duty as defined in the Teacher Retirement Act (Article 2922—1) shall be permitted to deposit with the Retirement System for each year he was engaged in said military duty, an equivalent amount to the deposits theretofore made with the Retirement System by reason of his service as a teacher or auxiliary employee during the latest preceding full year of such service; and he shall thereupon be entitled to one year of "membership former service credit" for each year spent in such military service. Acts 1959, 56th Leg. p. 983, ch. 458, § 1.

Emergency. Effective May 30, 1959.

Title of Act:

An Act to permit any member of the Teacher Retirement System who has heretofore performed military duty to make de-

posits with the Retirement System and receive "membership former service credit" for each creditable year spent in such military service; and declaring an emergency. Acts 1959, 56th Leg., p. 983, ch. 458.

**CHAPTER TWENTY-TWO—FOUNDATION SCHOOL PROGRAM**

Art.

2922—13a. Consideration of attendance of wards of state in determining number of professional units to be allotted each school district [New].

Art. 2922—13a. Consideration of attendance of wards of state in determining number of professional units to be allotted each school district

In determining the number of professional units allotted to each school district in the Foundation School Program, the attendance of orphan, dependent or neglected children who are wards of the State shall be considered eligible average daily attendance in the receiving school district(s) to which these children are transferred after approval by the County School Board and the State Commissioner of Education. The average daily attendance of these children shall be considered eligible beginning with the 1958-59 school year and in each school year thereafter. Acts 1959, 56th Leg., p. 914, ch. 419, § 1.

Emergency. Effective May 30, 1959.

Section 2 of the amendatory Act of 1959 repealed all conflicting laws and parts of

laws. Section 3 provided that the amendatory act was to be cumulative of other laws in effect.

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### CHAPTER FIVE—SUFFRAGE

#### Art. 5.05. Absentee voting

Subdivision 1. Any qualified elector of this State who expects to be absent from the county of his residence on the day of the election, or who because of sickness or physical disability cannot appear at the polling place in the election precinct of his residence on the day of election, may nevertheless cause his vote to be cast at such election by compliance with the applicable method herein provided for absentee voting.

Absentee voting shall be conducted by two methods: (1) voting by personal appearance at the clerk's office, and (2) voting by mail. All electors coming within the foregoing provisions of this subdivision may vote by personal appearance at the clerk's office if they are able to make such appearance within the period for absentee voting. The following persons, and no other, may also vote by mail:

(a) Qualified electors who because of sickness or physical disability cannot appear at the polling place on the day of the election. The elector shall state in his application the address to which the ballot is to be mailed to him, which must be either his permanent residence address or the address at which he is temporarily living. If the ballot is mailed to any address other than one of the foregoing, it shall be void and shall not be counted.

(b) Qualified electors applying for an absentee ballot on the ground of expected absence from the county of their residence on election day, who are absent from the county of their residence at the time of applying for an absentee ballot and expect to be absent from such county during the remainder of the period for absentee voting. The clerk shall not mail a ballot to any such elector unless the envelope in which the application is received is postmarked from a point outside the county and the ballot must be mailed to the elector at an address outside the county. The ballot shall not be counted unless the envelope in which the application is received and the carrier envelope in which the ballot is returned to the clerk are each postmarked from a point outside the county and the affidavit on the carrier envelope is certified by an officer other than an officer of the county of the elector's residence.

Electors not coming within (a) or (b) above who expect to be absent from the county of their residence on the day of the election may vote only by personal appearance at the clerk's office. As amended Acts 1959, 56th Leg., p. 1055, ch. 483, § 1.

<sup>1</sup> Article 8.23.

Subdivision 2. An elector desiring to vote absentee shall make written sworn application for an official ballot to the county clerk of the county of his residence, which application shall be signed by the elector, or by a witness at the direction of said elector in case of the latter's inability to make such written application because of physical disability. Such application shall state the ground on which the applicant is entitled to vote absentee and in case of an application by mail shall give the necessary information to enable the clerk to determine whether the applicant is entitled to vote by mail. Such application shall be accompanied by the poll tax receipt or exemption certificate of the elector, or, in lieu thereof, his affidavit in writing that same has been lost or mislaid. If the ground of application be sickness or physical disability by reason

of which the elector cannot appear at the polling place on election day, a certificate of a duly licensed physician or accredited Christian Science practitioner certifying as to such sickness or physical disability shall accompany the application, which certificate shall be in substantially the following form:

This is to certify that I have personal knowledge of the physical condition of \_\_\_\_\_, and that because of sickness or physical disability —he will be unable to appear at the polling place for an election to be held on the \_\_\_\_\_ day of \_\_\_\_\_, 19—.

Witness my hand at \_\_\_\_\_, Texas, this —day of \_\_\_\_\_, 19—.

\_\_\_\_\_  
(Signature of physician)

Any person who requests a physician to execute a certificate for another person without having been directed by such other person to do so, and any physician who knowingly executes a certificate except upon the request of the voter named therein or upon the request of someone at the voter's direction, and any physician who knowingly delivers a certificate except by delivering it to the voter in person or by mailing it to the voter at his permanent residence address or the address at which he is temporarily living, shall be guilty of a misdemeanor and upon conviction shall be fined not more than Five Hundred Dollars (\$500) or imprisoned in the county jail for not more than thirty (30) days, or both so fined and imprisoned. As amended Acts 1959, 56th Leg., p. 1055, ch. 483, § 1.

Subdivision 3. At any time not more than twenty (20) days, nor less than three (3) days, prior to the date of the election, an elector who is eligible to vote absentee may do so by making his personal appearance before the county clerk of the county of his residence at the office of the clerk and delivering to such clerk his application aforesaid, whereupon he shall be entitled to receive from the clerk the following absentee voting supplies:

(a) One (1) official ballot which has been prepared in accordance with law for use in such election.

(b) One (1) ballot envelope, which shall be a plain envelope without any markings except the words "Ballot Envelope" printed on the face thereof.

(c) One (1) carrier envelope, upon the face of which there shall appear the words "Carrier Envelope for Absentee Ballot" and the name, official title, and post office address of such county clerk, and upon the other side a printed affidavit in substantially the following form, to be filled out and signed by the elector:

State of \_\_\_\_\_

County of \_\_\_\_\_

I, \_\_\_\_\_, do solemnly swear that I am a resident of Precinct No. —, in \_\_\_\_\_ County, and am lawfully entitled to vote absentee at the election to be held in said precinct on the \_\_\_\_\_ day of \_\_\_\_\_, 19—; that the enclosed ballot expresses my wishes, independent of any direction or undue persuasion of any person, and that I did not use any memorandum or device to aid me in the marking of said ballot.

\_\_\_\_\_  
Signature of elector

By: \_\_\_\_\_

Signature of witness who  
assisted elector in event of  
physical disability

The elector shall then and there, in the office of the clerk, mark the ballot in the presence of the clerk, sign his name on the back of the ballot stub, detach the stub from the ballot, fold the ballot and place it in the envelope marked "Ballot Envelope" and seal the same. The elector shall then place the stub and the ballot envelope in the carrier envelope, seal the same and sign and swear to the affidavit on the carrier envelope, and deliver the carrier envelope to the clerk, who shall certify to the affidavit. The clerk shall, when requested, also take any other affidavits for the elector which are required by this Code, for which services no fee shall be charged.

Supervisors, as provided for in Sections 19, 20, and 21 of this Code, may be appointed to supervise the conduct of absentee voting in the clerk's office. As amended Acts 1959, 56th Leg., p. 1055, ch. 483, § 1.

Subdivision 4. At any time not more than twenty (20) days, nor less than three (3) days prior to the date of such an election, an elector eligible to vote absentee by mail who makes written application for a ballot as provided for in Subdivision 2 hereof, shall be entitled to have his ballot cast at such election on compliance with the following provisions:

The application shall be mailed to the county clerk of the elector's residence, whose duty it shall be forthwith to mail to such elector a blank official ballot, ballot envelope and carrier envelope, as described in Subdivision 3 of this Section. The elector shall mark the ballot before a notary public or other person authorized to administer oaths, sign his name on the back of the ballot stub, detach the stub from the ballot, fold the ballot and place it in the envelope marked "Ballot Envelope" and seal the same. The elector shall then place the stub and the ballot envelope in the carrier envelope, seal the same and sign and swear to the affidavit on the carrier envelope, which shall be certified by the notary public or other officer before whom the ballot is marked. The carrier envelope shall then be mailed, postage prepaid, to the county clerk. As amended Acts 1959, 56th Leg., p. 1055, ch. 483, § 1.

Subdivision 5. Upon receipt of any ballot sealed in its carrier envelope, including those ballots which have been voted in the clerk's office and those which have been returned by mail, the clerk shall keep the same unopened until the day of the election, and shall then deliver it to the judges hereinafter provided. Ballots mailed out by the county clerk within the legal time, but not received back by him on or before 1:00 p. m. of the day of election, shall not be voted, but shall remain in the custody of the county clerk during the thirty (30) day period provided in Subdivision 6. Prior to delivering the carrier envelope to the judges, the clerk shall enclose the same together with the elector's application and accompanying papers, including the envelope in which the application was received, in a larger jacket envelope. As amended Acts 1959, 56th Leg., p. 1055, ch. 483, § 1.

Subdivision 6. On the day of the election the jacket envelopes, containing the carrier envelopes which have been received together with the applications for absentee ballots and accompanying papers, shall be delivered by the county clerk to a special canvassing board of three (3) or more members named by the authority which is authorized by law to name the presiding judges of that election. The clerk shall deliver the envelopes to the canvassing board at such hour as the board shall direct, but not earlier than the hour at which the polls are opened and not later than 1:00 p. m. If delivered before 1:00 p. m., the clerk shall deliver in like manner to the board, at 1:00 p. m., all ballots received by mail before 1:00 p. m. of the day of the election which have not previ-

ously been delivered to the board. This special election board shall open the jacket envelopes, announce the elector's name and ascertain in each case if he is qualified to vote in that election and if he has complied with all applicable provisions of this Section to entitle his ballot to be cast. The board shall compare the signatures on the application and upon the affidavit on the carrier envelope. In case the board finds that the signatures correspond, that the application and the affidavit are duly executed, that the voter is a qualified elector, and that he has voted in a manner authorized in this section, they shall enter his name on the official poll list and shall open the carrier envelope so as not to deface the affidavit thereon, and shall place the sealed ballot envelope in the ballot box and the stub in the stub box. The carrier envelope, application and accompanying papers shall be replaced in the jacket envelope and returned to the county clerk at the same time the counted ballots are returned, and shall be preserved for the length of time provided by law for preservation of the counted ballots.

If the ballot be challenged by an election officer, supervisor, party challenger, or other person, the grounds of challenge shall be heard, and decided according to law, including the consideration of any affidavits submitted in support of or against such challenge. If the ballot be not admitted, there shall be endorsed on the face of the carrier envelope and the jacket envelope the word "rejected." The carrier envelopes containing rejected ballots shall be enclosed, securely sealed, in an envelope on which the words "rejected absentee ballots" have been written, together with a statement of the nature and date of the election, signed by the judges and clerks of election, and returned and preserved in the same manner as provided for return and preservation of official ballots voted at such election. The corresponding jacket envelopes containing the applications and accompanying papers shall also be returned to the clerk and preserved for the length of time provided by law for preservation of the counted ballots.

At such time as the presiding judge shall direct, the absentee ballot box shall be opened by the election officials whose duty it is to count the ballots, and they shall remove the ballots from the sealed ballot envelopes, endorse them in like manner as other ballots are required to be endorsed, and proceed to count and make out returns of all ballots cast absentee in the same way as is done at a regular polling place. The ballot envelopes for the voted ballots may be discarded or destroyed.

The special canvassing board, supervisors, and all others connected with the conduct of absentee voting shall be subject to the provisions of Section 105 of this Code<sup>1</sup> with respect to revealing information as to the results of the election.

The special canvassing board shall possess the same qualifications, be paid the same wage, and be subject to the same laws and penalties as regular election judges. Supervisors may be appointed as for regular voting boxes.

The county clerk shall return the poll tax receipts and the exemption certificates to the absentee voters at the end of thirty (30) days unless a contest has been filed. As amended Acts 1957, 55th Leg., p. 100, ch. 49, § 1; Acts 1959, 56th Leg., p. 1055, ch. 483, § 1.

Subdivision 7. Provided, however, that in all elections which are less than county-wide, except those elections in which the names of candidates for offices less than county-wide are printed on the same ballot as those that are candidates for state, district or county-wide offices, the following procedure shall be used. The clerk shall receive applications



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for ballots and shall furnish and handle the applications and the ballots as provided for in county-wide elections, as hereinabove set out, except that the clerk shall keep the carrier envelopes received by him until the second day prior to the election and shall then mail or deliver them as provided in Subdivision 8 of this Section; and ballots not received back by him on or before 8:00 a. m. of the second day prior to such election shall not be voted, but shall remain in the custody of the clerk during the thirty (30) day period provided in Subdivision 6. As amended Acts 1959, 56th Leg., p. 1055, ch. 483, § 1.

Subdivision 8. Upon the second day prior to such election, the clerk shall enclose each carrier envelope received by him on or before 8:00 a. m. of that day, together with the elector's application and accompanying papers, in a larger jacket envelope, which shall be securely sealed and endorsed with the name and official title of such clerk, and the words "This envelope contains an absentee ballot and must be opened only at the polls on election day," and the clerk shall forthwith mail same, or deliver it in person, to the presiding judge or any assistant judge of the election in the precinct of the elector's residence. As amended Acts 1959, 56th Leg., p. 1055, ch. 483, § 1.

Subdivision 15. No assistance shall be given an elector in marking his absentee ballot except where the elector is entitled to assistance as provided in Section 95 of this Code.<sup>1</sup> If the voter is entitled to assistance, he may be assisted by the clerk, notary public, or other officer before whom the ballot is marked, or by any other person selected by him, in the manner prescribed in Section 95 of this Code in so far as applicable, and subject to the restrictions and prohibitions contained in Section 95. The witness assisting the voter may perform any or all of the physical acts necessary to comply with the procedure for absentee voting. If the voter cannot sign his name, the witness shall sign the voter's name wherever such signature is required by this Code, and the name of the witness thereunder. Where any assistance is rendered in preparing an absentee ballot other than as herein allowed, the ballot shall not be counted but shall be void for all purposes. Added Acts 1959, 56th Leg., p. 1055, ch. 483, § 2.

<sup>1</sup> Article 8.13.

Subdivision 16. Notwithstanding the provisions of Subdivisions 3 and 4 of this Section, absentee voting in each second primary or runoff election held under the provisions of Section 181 of this Code<sup>1</sup> shall begin on the twentieth day preceding the date of the election. In all other respects the procedure for absentee voting in the second primary shall be the same as in other elections. Added Acts 1959, 56th Leg., p. 1055, ch. 483, § 2.

<sup>1</sup> Article 13.03.

Subdivision 17. Absentee ballots shall not be considered in determining precinct representation in county conventions held by political parties, but shall be considered in determining county representation in State conventions. Added Acts 1959, 56th Leg., p. 1055, ch. 483, § 2.

Effective 90 days after May 12, 1959, date of adjournment.

Section 5 of the amendatory Act of 1959 contained a severability clause.

Application of amendatory Act of 1959 to elections in progress on its effective date, see note under art. 5.06.

### **Art. 5.06. Absentee ballots**

The ballot used in absentee voting, except where absentee voting is conducted on voting machines, shall be the stub ballot provided for elsewhere in this Code. If the name of the elector does not appear on the re-

verse side of the stub, an election judge shall write the name of the elector on the back of said stub, together with his own signature, before depositing same in the stub box. The stub box shall be delivered by the canvassers after the votes are counted to the district clerk, the ballot box to the county clerk and the returns to the proper official as provided by law for regular polling places. As amended Acts 1959, 56th Leg., p. 1055, ch. 483, § 3.

Effective 90 days after May 12, 1959, date of adjournment.

Section 4 of the amendatory Act of 1959, 56th Leg., p. 1055, ch. 483 provided: "The changes made in this Act shall not apply

to elections which are in progress on its effective date, and absentee voting in all such elections shall be conducted in accordance with the law as it existed at the time absentee voting began in the election."

#### Art. 5.09. Liability to pay poll tax

A poll tax shall be collected from every person between the ages of twenty-one (21) and sixty (60) years who resided in this state on the first day of January preceding its levy. Indians not taxed, persons insane, blind, those who have lost a hand or foot, those permanently disabled, and all disabled veterans of foreign wars, where such disability is forty percent (40%) or more, excepted. It shall be paid at any time between the first day of October and the first day of February following; and the person when he pays it, shall be entitled to his poll tax receipt, even if his other taxes are unpaid. As amended Acts 1959, 56th Leg., p. 171, ch. 97, § 1.

Effective 90 days after May 12, 1959, date of adjournment.

#### Art. 5.14. Form of receipt

Each poll tax receipt and its duplicate shall show the name of the person to whom it was issued, the payment of the tax, the age, race and the length of time the taxpayer has resided in the State and whether the taxpayer is a citizen of the United States, and if so, whether a native born or a naturalized citizen of the United States, and the State of the United States or the foreign country where the taxpayer was born, the length of time the taxpayer has resided in the county, the voting precinct in which the taxpayer lives, the taxpayer's occupation and post office address, or if living in an incorporated city, the ward, street, number of his residence in such city or town; and a blank space for political party affiliation of the taxpayer, to be completed as provided in Article 179a of this Code. The poll tax receipt shall be numbered consecutively in each book provided for in this Code.

(6) The poll tax receipt shall be in the following form:

Poll Tax Receipt No. \_\_\_\_\_  
 State of Texas  
 County of \_\_\_\_\_

Received of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, A.D. \_\_\_\_\_ the sum of \$\_\_\_\_\_ in payment of poll tax for year A.D. 19\_\_\_\_\_, the said taxpayer being duly sworn by me, says that he (she) is \_\_\_\_\_ years old, that he (she) is a native born (naturalized) citizen of the United States, and was born in \_\_\_\_\_ County, \_\_\_\_\_ State, that he (she) has resided in Texas \_\_\_\_\_ years and in \_\_\_\_\_ County \_\_\_\_\_ years, that he (she) is by occupation \_\_\_\_\_, and that his (her) post office address is \_\_\_\_\_, (if in an incorporated city or town, a blank word must be printed for the ward, street, and number of residence in lieu of his (her) post office address, and

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length of time he (she) has resided in such city (or town)). Party Affiliation: \_\_\_\_\_.

(Signed) \_\_\_\_\_

All of which I certify:

(seal)

If from the information on the poll tax receipt above required, it appears that the person receiving the same is an alien, he shall be given a receipt from a book specially prepared for alien taxpayers, which book is hereinafter provided in this title, and the Tax Collector and the Commissioners Court or other authorities providing said poll tax receipt shall have printed on the face of said receipt the word 'alien' which said printing shall not be less than two (2) inches in height, superimposed in outline type, and printed in red ink. As amended Acts 1959, 56th Leg., p. 1049, ch. 480, § 1.

Effective 90 days after May 12, 1959, date of adjournment.

Section 4 of the amendatory Act of 1959 repealed all conflicting laws and parts of laws to the extent of such conflict and section 5 contained a severability clause.

## CHAPTER SIX—OFFICIAL BALLOT

### Art. 6.01. Official Ballot

In all elections by the people, the vote shall be by official ballot, which shall be numbered and elections so guarded and conducted as to detect fraud and preserve the purity of the ballot. No ballot shall be used in voting at any general, primary or special election held to elect public officers, select candidates for office or determine questions submitted to a vote of the people, except the official ballot, unless otherwise authorized by law. At the top of the official ballot shall be printed in large letters the words "Official Ballot." It shall contain the printed names of all candidates whose nominations for an elective office have been duly made and properly certified. The names shall appear on the ballot under the head of the party that nominates them, except as otherwise provided by this Code. No name shall appear on the official ballot except that of a candidate who was actually nominated (either as a party nominee or as a non-partisan or independent candidate) in accordance with the provisions of this Code. The name of no candidate shall appear more than once upon the official ballot, except (a) as a candidate for two (2) or more offices permitted by the Constitution to be held by the same person; or (b) when a candidate has been duly nominated for the office of President or Vice-President of the United States and also for an office requiring a state-wide vote for election. The name of no candidate of any political party that cast two hundred thousand (200,000) votes or more for its candidate for governor at the last preceding general election shall be printed on any official ballot for a general election, unless nominated by primary election, on primary election day, except as herein otherwise provided. As amended Acts 1955, 54th Leg., p. 48, ch. 34, § 1; Acts 1959, 56th Leg., p. 285, ch. 161, § 1.

Effective 90 days after May 12, 1959, date of adjournment.

Section 2 of the amendatory Act of 1959 repealed all conflicting laws and parts of laws.

CHAPTER SEVEN—ARRANGEMENT AND  
EXPENSES OF ELECTION

## Art. 7.14. Providing for voting machines

**Sec. 7b. Absentee Voting by Paper Ballots for Precinct Offices.** Whenever, at any election where precinct offices are to be voted on, the authority charged with holding the election determines to use voting machines for conducting absentee voting by personal appearance in the clerk's office and the number of separate precinct offices makes it impossible to place the entire ballot on one voting machine, the authority charged with holding the election may in its discretion further determine by proper resolution or order to use paper ballots for absentee voting by personal appearance for any or all of the precinct offices to be voted on, and to use a voting machine or machines for all other offices to be voted on at the election. The paper ballot used for precinct offices shall conform to all requirements for official ballots as provided elsewhere in this Code, except that there shall be listed thereon only the precinct offices for which the authority holding the election has determined to use paper ballots. Each voter making his personal appearance in the clerk's office shall be furnished with a paper ballot containing the precinct offices for which he is entitled to vote, and he shall cast his vote for offices listed on the paper ballot in accordance with the procedure for casting absentee ballots voted by personal appearance as provided in Sections 37 and 38 of this Code.

Absentee voting by mail shall be conducted by use of an official paper ballot for all offices to be voted on at the election, in the manner provided in Sections 37 and 38 of this Code.

A special canvassing board, which shall be appointed and compensated as provided in Subdivision 6 of Section 37 of this Code, shall count and make return of the paper ballots cast for precinct offices, as well as the absentee ballots cast by mail, in the manner prescribed in Subdivision 6 of Section 37. The votes cast on the voting machine or machines shall be canvassed and recorded and return thereof made in the manner prescribed for absentee votes cast on voting machines in Section 7 of Section 79 of this Code.

The provisions of this Subsection are cumulative of all other provisions relating to absentee voting. Added Acts 1959, 56th Leg., p. 183, ch. 101, § 1.

*Emergency. Effective April 23, 1959.*

**Sec. 16a. Arrangement of Ballot and Write-in Vote in Certain Counties.** (a) In any county of this State where voting machines are used and the number of offices to be filled in the election exceeds the number of spaces available on the voting machines when the names of the offices and names of candidates are arranged on the ballot horizontally, the election authorities may use the available spaces on the voting machine in any good and proper manner which will not be confusing to the voter and which will enable the election authorities to conduct the election in an orderly and efficient manner.

(b) In any county, as defined in paragraph (a) hereof, any voter desiring to cast a write-in vote for any person whose name does not appear on the ballot on the voting machine may request a write-in ballot from

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the presiding official of the election or his clerk. Such write-in ballot shall be substantially in the following form:

NO. _____ Write-In Ballot Stub _____ Election Date: For: _____ Name of Office	FOR: _____ Name of Write-In Candidate For the office of: _____ Title of Office
---	--

After filling in the write-in ballot, said voter shall affix his signature upon the reverse side of the write-in ballot stub and shall detach the stub and place it in a sealed stub box prepared in the manner provided in Article 97 of the Election Code. The voter shall then deposit his write-in ballot in a ballot box prepared as all other boxes for election. No write-in ballot shall be cast or counted for any person whose name shall appear on the ballot on the voting machine.

Provided however, that the following affidavit shall be and appear on the reverse side of the left hand portion of such write-in ballot.

STATE OF TEXAS  
COUNTY OF \_\_\_\_\_

Before me, the undersigned authority, on this day personally appeared \_\_\_\_\_, who, having been by me first duly sworn, upon his oath, did depose and say:

That I have not and will not cast a vote on the voting machine for the office of \_\_\_\_\_

\_\_\_\_\_ for which I have cast a ballot herewith by way of a write-in.

Subscribed and sworn to before me this the \_\_\_\_\_ day of \_\_\_\_\_ A. D. 195\_\_\_\_.

\_\_\_\_\_  
Presiding officer, Precinct \_\_\_\_\_,  
\_\_\_\_\_ County, Texas.

And provided further that all of the provisions of Chapter 492, Acts of the Fifty-second Legislature, 1951, relating to the casting of write-in ballots shall be in full force and effect, except as herein provided. Added Acts 1959, 56th Leg., 3rd C.S., p. 432, ch. 21, § 1.

Effective 90 days after Aug. 6, 1959, date of adjournment.

CHAPTER EIGHT—CONDUCTING ELECTIONS AND  
RETURNS THEREOF

## Art. 8.46. Death of Governor-elect or death or incapacity of Governor-elect and Lieutenant Governor-elect

Emergency Interim Executive Succession  
Act, see Vernon's Ann.Civ.St. art. 6252—10.

## CHAPTER THIRTEEN—NOMINATIONS

1. BY PARTIES OF TWO HUNDRED  
THOUSAND (200,000) VOTES  
OR OVER

Art.

13.01a. Who are members of organized  
party [New].

1. BY PARTIES OF TWO HUNDRED THOUSAND (200,000) VOTES  
OR OVER

## Art. 13.01a. Who are members of organized party

(1) The members of an organized political party who shall be permitted to participate in its convention procedure as set forth in this Code shall be only those persons who have become qualified as members of the party by voting in the elections of the party or have otherwise qualified as provided in this Section.

(2) The election and convention procedure of the party shall include the primary held on the fourth Saturday in July in even numbered years or the second primary held on the fourth Saturday in August in such years and shall include the conventions of the party at precinct, county and state level in both its State Convention procedure and its National Convention procedure in so far as they apply herein.

(3) Persons who have not qualified as members of a political party as required by this Section shall not only be disqualified to participate in the convention procedure of the political parties, but they shall also be disqualified to be selected or to hold the position of executive committee member, precinct judge or chairman, delegate to any convention of a party, national committeeman, committeewoman or elector of party.

(4) To be a qualified member of an organized political party and to fully participate in its conventions shall be as follows:

(a) The applicant for party affiliation shall become a qualified member of a political party when he has voted within that party's primary, or should a party not hold a primary, anyone who has not voted in the primary of another party shall be eligible and presumed to be qualified to participate in the conventions of the party not holding a primary election.

(i) Each voter shall present his poll tax receipt or exemption certificate, or an affidavit of its loss, to the election judge on the first time such voter participates in a primary election and the election judge shall stamp within the party affiliation space on the face of said poll tax receipt, exemption, or affidavit of loss, the words "Democrat" or "Republican" or other party primary vote connotation as the case may be and such stamped poll tax receipt, exemption, or affidavit of loss shall be the designation of a qualified member of that party; such qualified member of such party, hav-

ing once voted within a party primary shall remain a qualified member of that party for the duration of the poll tax period.

(a) In the event a voter shall vote by absentee ballot, the County Clerk shall stamp within the party affiliation space on the face of the poll tax receipt, exemption certificate, or affidavit of its loss, the words "Democrat" or "Republican" or other party primary vote connotation as the case may be, and shall furnish such absentee voter with an appropriate affidavit of his party primary vote and such affidavit issued by the County Clerk shall be the designation of a qualified member of such party; such qualified member of such party, having once voted within a party primary, shall remain a qualified member of that party for the duration of the poll tax period. The County Clerk shall make available to all persons voting absentee in a primary election who are not required to have an exemption certificate or a poll tax receipt a certificate signed by the County Clerk indicating that such person has voted in the primary election. This certificate shall be in the following form:

Date: \_\_\_\_\_  
\_\_\_\_\_ has voted in the primary election  
(Name of Voter)  
of the \_\_\_\_\_ party.

County Clerk

This certificate shall serve as evidence that the person whose name appears thereon has participated in the primary election and is therefore eligible to participate in the convention of the political party holding the primary in which the person has voted.

(ii) To become qualified for any party convention of a party not required to hold a primary or to become qualified for party membership for any party convention held prior to a primary, each voter who desires to participate in such party convention shall present his poll tax receipt, exemption certificate, or affidavit of loss to the Precinct Chairman showing that such voter has not participated in the primary of another party, and upon such presentation the Precinct Chairman shall cause to be stamped upon the face of said poll tax, exemption certificate, or affidavit of loss in the space for Party Affiliation at said convention "Democrat" or "Republican" or other party as the case may be and such stamped poll tax receipt, exemption certificate, or affidavit of loss shall be the designation of a qualified member of that party; such qualified member of such party, having once participated in a party convention shall remain a qualified member of the party for the duration of the poll tax period.

(5) The presiding judges of party primary elections shall make available to all persons voting in a primary election who are not required to have an exemption certificate or a poll tax receipt, a certificate signed by the presiding judge of the precinct in which such person votes that the person has voted in the primary election. This certificate shall be in the following form:

Date \_\_\_\_\_  
\_\_\_\_\_ has voted in the primary election  
(Name of Voter)  
of the \_\_\_\_\_ Party.

Presiding Judge, Precinct No. \_\_\_\_\_

This certificate shall serve as evidence that the person whose name appears thereon has participated in the primary election and is therefore eligible to participate in the convention of the political party holding the primary in which the person has voted.

(a) All persons not required to have a poll tax receipt or an exemption certificate shall be eligible to participate in any convention of any party held prior to any primary election and the precinct chairman of any convention held prior to any primary election shall make available to all persons participating in the precinct convention who are not required to have an exemption certificate or a poll tax receipt a certificate signed by the party precinct chairman in which such person presents himself for participation in said precinct convention that the person has participated in the precinct convention, and such certificate shall be in the same form as provided for herein.

(6) Any person who participates or attempts to participate in a party convention held by a political party on a certification of qualifications of party affiliation other than the one prescribed herein shall be guilty of a misdemeanor and upon conviction shall be fined not less than Twenty Dollars (\$20) nor more than Two Hundred Dollars (\$200). Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 179a added Acts 1959, 56th Leg., p. 1049, ch. 480, § 2.

Effective 90 days after May 12, 1959, date of adjournment.

Section 3 of Acts 1959, 56th Leg., p. 1049, ch. 480 provided: "The provisions of this Act relating to the requirements of designation of party affiliation shall become effective on and after October 1,

1959, and the provisions of this Act relating to participation in primary elections, conventions and other party affairs shall become effective on and after February 1, 1960."

### Art. 13.03. Date of Primary

The first Saturday in May of 1960, and every two (2) years thereafter shall be general primary election day, and primary elections to nominate candidates for a general election shall be held on no other day, except when specially authorized. No person shall be declared the nominee of any political party at any primary election for any office unless he has complied with every requirement of all laws applicable to primary and other elections, and has received a majority of all the votes cast at such primary elections for all candidates for such office. If at the general primary election for any political party, no candidate becomes the nominee for any office under this Article, a second primary election shall be held by such political party on the first Saturday in June succeeding such general primary election, and only the name of the two (2) candidates who received the highest number of votes for any office for which nomination was made at the general election shall be placed on the official ballot as candidates for such office at such second primary, except as herein stated, provided that in case no one received a majority in the first primary and if the second and third highest candidates in that race shall be tied these two (2) shall cast lots under the direction of the county chairman or state chairman as the case may be to see which of the two (2) shall have his name printed on the second primary ballots. The second primary election shall be conducted according to the law prescribed for conducting the general primary election and the candidates receiving a majority of all votes cast for the office to which they aspire shall be declared the nominee for their respective offices. Nominations of candidates to be voted for at any special election shall be made at a primary election at such time as the party executive committee shall determine, but no such committee shall ever have the power to make such nominations, except where provided for by law. All precincts in the same county and all counties in the same district shall vote on the same day. Nominations of party candidates for offices to be filled in a city or town shall be made not less than thirty (30) days prior to the city or town election at which they are



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to be chosen, in such manner as the party executive committee for such city or town shall direct, and all laws prescribing the method for conducting county primary elections shall apply to them. As amended Acts 1959, 56 Leg., p. 335, ch. 165, § 1.

Effective 90 days after May 12, 1959,  
date of adjournment.

Section 16 of the amendatory Act of 1959  
contained a severability clause.

Section 17 repealed all conflicting laws  
and parts of laws.

**Art. 13.08. Expenses of primary**

Prior to the assessment of the candidates, the county committee shall carefully estimate the cost of printing the official ballots, renting polling places where same may be found necessary, providing and distributing all necessary poll books, blank stationery and voting booths required, compensation of election officers and clerks and messengers to report the result in each precinct to the county chairman, as provided for herein, and all other necessary expenses of holding the general and second primaries in such county and on the second Monday in February preceding each primary, shall apportion such cost in such manner as in their judgment is just and equitable among the various candidates for nomination for district, county and precinct offices only as herein defined, and offices to be filled by the voters of such district, county or precinct only, except the office of Justice of the Court of Civil Appeals, but in making the apportionment the committee shall take into consideration the amount which it has received or expects to receive from filing fees of candidates for Justice of the Court of Civil Appeals; provided, that where the district office, except for Members of the Legislature and Justices of the Courts of Civil Appeals, covers more than one county, the assessment of such a candidate by the county shall be not more than a sum which is the quotient of the amount which he would be assessed if he represented only one county determined by the formula used to assess county candidates, when divided by the number of counties in his district. However, where a member of the State Board of Education is elected from a Congressional district, this filing fee for any such candidate for the State Board of Education shall not be more than Fifty Dollars (\$50). In making the assessment upon any candidate the committee shall give due consideration to the importance, emolument, and term of office for which the nomination is to be made. The committee shall, by resolution direct the chairman to immediately mail to each person against whom an assessment is made a statement of the amount of such expenses apportioned to him, with the request that he pay the same to the county chairman on or before the Saturday before the third Monday in February thereafter. Candidates filing subsequently shall pay the same assessment prescribed for other candidates for the office they seek, and shall have one (1) week from the date they file in which to pay said assessment. It shall be sufficient to meet the requirements of this law to mail by registered letter to the chairman before the deadline herein provided, as shown by the postmark on the letter, a money order, a certified check, or a good personal check. As amended Acts 1955, 54th Leg., p. 1131, ch. 424, § 1; Acts 1955, 54th Leg., p. 1295, ch. 513, § 1; Acts 1959, 56th Leg., p. 335, ch. 165, § 2.

Effective 90 days after May 12, 1959,  
date of adjournment.

**Art. 13.12. Request to go on ballot**

The request to have the name of any person affiliating with any party placed on the official ballot for a general primary as a candidate for

the nomination of such party for any State office, for any district office, and for any county or precinct office or portion thereof shall be governed by the following:

1. Such request shall be in writing, indicating whether for full term or for an unexpired term, signed and duly acknowledged by the person desiring such nomination, or by twenty-five (25) qualified voters, which request shall be endorsed by the candidate named therein showing his consent to such candidacy, if nominated. It shall state the occupation, county of residence and post office address of such person, and if made by him shall also state his age.

2. Any such request shall be filed with the State chairman in the case of state-wide races, with the district chairman in the case of districts consisting of more than one (1) county, and with the county chairman in case of county and precinct officers; such request shall be filed not later than the first Monday in February preceding such primary, and shall be considered filed if sent to such chairman at his post office address by registered mail from any point in this State, provided, however, that in the event that there is no candidate for the nomination of any office due to the death of the one who had filed or for any other reason, applications may be filed not later than the first Monday in March preceding the primary.

3. In the case of district offices consisting of more than one (1) county if there be no chairman of such district executive committee, then the said requests to go on the ballot shall be filed as aforesaid with the chairman of each county composing such district.

4. On the second Monday in March preceding each general primary, the State committee shall meet at some place to be designated by its chairman who shall not less than three (3) days prior to such meeting notify by mail all members of said committee and all persons whose names have been requested to be placed upon the official ballot of such designation. Such committee at this meeting by resolution shall direct their chairman to certify to each county chairman the names and county of residence of such candidates as shown by such request. Copies of such certificates shall be immediately furnished to each newspaper in the State desiring to publish same, and one (1) copy shall at once be mailed to the chairman of the executive committee of each county.

5. The terms of this law shall apply to the county chairman and precinct committeemen, and the names of such candidates shall not be printed on the primary ballot unless such application shall have been filed as provided herein. As amended Acts 1959, 56th Leg., p. 335, ch. 165, § 3.

Effective 90 days after May 12, 1959,  
date of adjournment.

#### Art. 13.14. Primary Committee

Subject to the approval of the committee, the county chairman shall appoint a subcommittee of five (5) members to be known as the primary committee, of which he shall be ex-officio chairman. This subcommittee shall meet on the fourth Monday in March and make up the official ballot for such general primary in such county, in accordance with the certificates of the State and district chairman and the request filed with the county chairman, and place the names of the candidates for nomination for State, district, county and precinct offices thereon in the order determined by the county executive committee as herein provided. As amended Acts 1959, 56th Leg., p. 335, ch. 165, § 4.

Effective 90 days after May 12, 1959,  
date of adjournment.

**Art. 13.17. Order of Offices and Names on Ballot**

The various county committees of any political party, on the third Monday in March preceding each general primary, shall meet at the county seat and determine by lot, in open meeting, the order in which the offices and names of all candidates for all offices, including state-wide races, requested to be printed on the official ballot shall be printed thereon. As amended Acts 1959, 56th Leg., p. 335, ch. 165, § 5.

Effective 90 days after May 12, 1959,  
date of adjournment.

**Art. 13.24. Triplicate returns and canvass**

Immediately upon the completion of counting the ballots, the precinct election judges shall prepare and make out triplicate returns of the same, showing: (1) the total number of votes polled at such box; (2) the total number of votes cast at such box for each candidate, and the total number of votes polled at such box for and against any proposition voted upon.

Such returns shall be signed and certified as correct by the judges and clerks of the election precincts. One (1) copy of said returns shall be sealed up in an envelope and delivered by one (1) of the precinct judges of the election to the Chairman of the County Executive Committee immediately after the ballots have been counted and the proper records made in connection therewith; one (1) copy of said returns shall be placed in one (1) of the ballot boxes, together with the ballots voted and shall be locked and sealed therein; the remaining copy of said returns shall be immediately delivered to the County Clerk as provided in Section 201 of this Act.<sup>1</sup> The Chairman of the County Executive Committee shall, upon receiving returns from each election precinct in the county, order the members of the County Executive Committee to convene at the county seat of the county on the following Tuesday succeeding the day of such primary elections and the returns shall be opened by the Executive Committee in executive session and shall be canvassed and the results recording the state of the polls in each precinct shall be entered in the same book provided for in Section 116 of Chapter 492, Acts of the Fifty-second Legislature, Regular Session, 1951, by the County Clerk.<sup>2</sup> The County Attorney shall, upon relation of the County Chairman, immediately institute mandamus proceedings in the proper court to compel the delinquent returning officers to make proper returns as required by law, and it shall be the duty of the County Chairman and County Clerk to notify the County Attorney of the delinquency. As amended Acts 1959, 56th Leg., p. 221, ch. 130, § 1.

<sup>1</sup> Article 13.23.

<sup>2</sup> Article 8.34.

Effective 90 days after May 12, 1959,  
date of adjournment.

Section 2 of the amendatory Act of 1959  
repealed all conflicting laws and parts of  
laws to the extent of such conflict only.

*Amendment by Acts 1959, 56th Leg., p. 335, ch. 165, § 6, see art. 13.24,  
post.*

**Art. 13.24. Triplicate returns and canvass**

Immediately upon the completion of counting of the ballots within the prescribed twenty-four (24) hours, the precinct election judges shall notify the Chairman of the County Executive Committee either personally or by telephone of the results. As soon thereafter as possible the precinct election judges shall prepare and make out triplicate returns of the same, showing: (1) the total number of votes polled at such box; (2) the total number of votes cast at such box for each candidate, and the total number of votes polled at such box for or against any proposition voted upon.

Such returns shall be signed and certified as correct by the judges and clerks of the election precinct. One (1) copy of said returns shall be sealed up in an envelope and delivered by one (1) of the precinct judges of the election to the Chairman of the County Executive Committee immediately after the ballots have been counted and the proper records made in connection therewith; one (1) copy of said returns shall be placed in one (1) of the ballot boxes; together with the ballots voted and shall be locked and sealed therein; the remaining copy of said returns shall be immediately delivered to the County Clerk as provided in Section 201 of this Act. The Chairman of the County Executive Committee shall, upon receiving returns from each election precinct in the county, order the members of the County Executive Committee to convene at the county seat of the county on the following Tuesday succeeding the day of such primary elections and the returns shall be opened by the Executive Committee in executive session and shall be canvassed and the results recording the state of the polls in each precinct shall be entered in the same book provided for in Section 116, Chapter 492, Acts, Fifty-second Legislature, Regular Session, 1951,<sup>1</sup> by the County Clerk. The County Attorney shall upon relation of the County Chairman, immediately institute mandamus proceedings in the proper court to compel the delinquent returning officers to make proper returns as required by law, and it shall be the duty of the County Chairman and County Clerk to notify the County Attorney of the delinquency. As amended Acts 1959, 56th Leg., p. 335, ch. 165, § 6.

<sup>1</sup> Article 8.34.

Effective 90 days after May 12, 1959, date of adjournment.

*Amendment by Acts 1959, 56th Leg., p. 221, ch. 130, § 1, see art. 13.24, ante.*

#### Art. 13.27. Tabulated statement

The chairman of the executive committee in each county shall immediately prepare, within twenty-four (24) hours after the vote in the primary election has been canvassed by the County Executive Committee as provided in Section 202 of this Act, a tabulated statement of the votes cast in his county for each candidate for each nomination for a State, district, county or precinct office, and of that cast for county chairman and mail such statement as to a State or district office, in a sealed envelope by registered letter to the chairman of the state executive committee, who shall present the same to the state executive committee as herein provided. The state executive committee shall meet at the seat of government on the first Saturday following the day of the first primary election and shall canvass the returns for all State and district offices. In the event any candidate for a district office received in the first primary the necessary vote to nominate, the state executive committee shall certify the name of such candidate to the county clerks of the proper district to be printed upon the official ballot for the general election as a candidate of the party for said office. In the event no candidate for a particular State or district office received the necessary vote to nominate at the first primary, the state executive committee shall upon canvassing the returns, determine the two (2) candidates who received the largest number of votes cast for all candidates for the particular State or district office and shall order that the names of these candidates be printed upon the official ballot for the second primary election. As amended Acts 1959, 56th Leg., p. 335, ch. 165, § 7.

Effective 90 days after May 12, 1959, date of adjournment.

## Art. 13.34. County and precinct conventions

On the first Saturday after the primary election day of 1960, there shall be held in each county a county convention of each party to be composed of one (1) delegate for each precinct in such county, for each twenty-five (25) votes, or major fraction thereof, cast for the party's candidate for Governor in such precinct at the last preceding general election which delegate or delegates shall be elected by the qualified voters of each precinct on primary election day at precinct conventions to be held on said day, which county conventions shall elect one (1) delegate for each three hundred (300) votes, or major fraction thereof, cast for the party's candidate for Governor in such county at the last preceding general election; on the first Saturday after the primary election day of 1962, and each two (2) years thereafter, there shall be held in each county a county convention of each party to be composed of one (1) delegate from each precinct in such county for each twenty-five (25) votes, or major fraction thereof, cast for the party's candidate for Governor in such precinct at the last preceding general election held in presidential election years, which delegate or delegates shall be elected by the qualified voters of each precinct on primary election day at precinct conventions to be held on said day, which county convention shall elect one (1) delegate for each three hundred (300) votes, or major fraction thereof, cast for the party's candidate for Governor in such county at the last preceding general election held in presidential election years. The delegates so elected shall be delegates for all state conventions held throughout the remainder of the year and such of them as may attend such state conventions, shall cast the votes for their respective counties in such conventions. The qualified voters of each voting precinct of the county shall assemble on the date named and shall be called to order by a precinct chairman who shall have been previously elected by the qualified voters of the precinct; or if such elected chairman is unavailable, then the precinct chairman appointed by the county executive committee of the party, and who shall be a qualified voter of said election precinct; or in his absence, by any qualified voter. Before transacting any business, the precinct chairman shall cause to be made a list of all qualified voters present. The name of no person shall be entered upon said list nor shall he be permitted to vote, be present at, or to participate in the business of such convention until it is made to appear that he is a qualified voter in said precinct from a certified list of the qualified voters, the same as is required in conducting a general election. Said precinct convention shall elect from among those present and qualified a permanent chairman and such other officers as may be necessary to conduct its business. The chairman of said convention shall possess all the power and authority that is given to election judges by the provisions of this Code. After the convention is organized it shall elect its delegates to the county convention and transact such other business as may properly come before it. The officers of the precinct convention shall keep a written record of its proceedings, including a list of delegates elected to the county convention which shall constitute the returns from said convention. The record, and a copy thereof, shall be signed officially, sealed up and safely transmitted by the permanent chairman of the precinct convention within three (3) days after the precinct convention to the county clerk of the county, who shall affix his file mark thereto and who shall promptly deliver the original copy of such return to the chairman of the county executive committee, and the return filed with the county clerk shall be open to public inspection during the regular office hours. The chairman of the county executive committee shall deliver the list of delegates named by the pre-

cinct conventions in the county to the county convention, and said lists shall constitute the temporary roll of those selected as delegates to the county convention and only delegates on such temporary roll shall be permitted to vote in the temporary organization of said county convention. The county convention shall elect a permanent chairman and such other officers as may be necessary to conduct its business and immediately upon the adjournment of each such county convention the permanent chairman thereof shall make out a certified list of the delegates chosen, together with a copy of all resolutions adopted by the county convention, and shall sign the same, the permanent secretary of such convention attesting his signature, and within five (5) days after said county convention shall forward such certified list, resolutions and copies of each thereof by sealed registered letter to the Secretary of State in Austin, Texas, who shall affix his file mark thereon and who shall deliver the originals thereof to the chairman of the state executive committee, prior to any state convention, who shall deliver the same to such state convention; and such lists shall constitute the temporary roll of those selected as delegates to such convention, and only delegates on such temporary roll shall be permitted to vote in the temporary organization of the state convention. No person shall be permitted to hold a proxy or vote a proxy at a state convention from more than one county. The county executive committee in its meeting on the second Monday in March preceding the general primary election or, upon its failure to act, the county chairman, shall determine the hour and place at which the precinct conventions shall be held on primary election day, and the county chairman shall be required to post a copy of this order on a bulletin board at the county courthouse and file a copy of the same in the office of the county clerk where the same shall be open to public inspection. This notice shall be posted by the county chairman at least ten (10) days prior to the holding of the precinct conventions. Also at this meeting the county executive committee, or, upon its failure to act, the county chairman, shall decide the hour and place at which the county convention shall be held on the first Saturday after primary election day, and the county chairman shall post this order on the bulletin board at the county courthouse and also file a copy of this notice with the county clerk. This notice shall also be posted at least ten (10) days prior to the date of the county convention. Should the county chairman fail to post such orders and file such notices, then any member of the county executive committee may post such orders and file such notices and such shall constitute the orders and notices required herein. Should more than one such member of the county executive committee post such orders and file such notices, then the first posting and filing in point of time shall prevail. Representatives of newspapers, wire news services, radio and television stations shall have the right to attend precinct conventions, the county conventions, and the state convention for the purpose of reporting the proceedings thereof. As amended Acts 1957, 55th Leg., p. 430, ch. 206, § 1; Acts 1959, 56th Leg., p. 335, ch. 165, § 8.

Effective 90 days after May 12, 1959,  
date of adjournment.

#### Art. 13.35. Place for State Convention

At the meeting of the State Executive Committee held on the second Monday in March preceding each general primary election the said committee shall decide upon the hour and place where the State convention of the party shall be held on the third Tuesday in September, 1960, and each two (2) years thereafter. The chairman of the State executive committee shall file with the Secretary of State a notice of the

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hour and place of holding the State convention and a copy of such notice shall be mailed to the county chairman of that party in each county in the State at least ten (10) days before the convention is held. As amended Acts 1959, 56th Leg., p. 335, ch. 165, § 9.

Effective 90 days after May 12, 1959,  
date of adjournment.

**Art. 13.36. State Committee to canvass**

On the second Tuesday following the day of the first primary in May, 1960, and every two (2) years thereafter, the State executive committee shall meet at a place selected at the meeting held on the second Monday in March preceding, and shall open and canvass the returns of the primary elections held on the first Saturday in May as to candidates for State offices, as certified by various county chairmen, and shall prepare a tabulated statement showing the number of votes received by each such candidate in each county, which statement shall be approved by the State committee and certified by its chairman. If such returns show that for any State office no candidate received a majority of all the votes cast for all candidates for such office, such committee shall prepare a list of the two (2) candidates receiving the highest vote for each office for which no candidate received a majority of votes cast at such primary for such office and shall certify same to the county chairman of the several counties to be placed upon the official ballot as candidates for office at the second primary election to be held on the first Saturday in June thereafter. On the third Saturday in June and every two (2) years thereafter, the State executive committee shall meet at the place selected for the meeting of the State convention and shall open and canvass the returns of the second primary election held to nominate candidates for State offices as certified by the various county chairmen to the State chairman, and shall prepare a tabulated statement showing the number of votes received by each such candidate in each county, which statement shall be approved by the State committee and certified by its chairman. At this meeting the State committee shall also prepare a complete list of the delegates elected to the State conventions from each county as certified to the Secretary of State by the permanent chairman of each county convention and delivered to them by the Secretary of State in accordance with the provisions of Section 212 of this Act. The State chairman shall present said tabulated statement and list of the delegates to any State convention, and the said list shall constitute the temporary roll of those selected as delegates to such State conventions, and only delegates on such temporary roll shall be permitted to vote in the temporary organization of any such State convention. As amended Acts 1959, 56th Leg., p. 335, ch. 165, § 10.

Effective 90 days after May 12, 1959,  
date of adjournment.

**Art. 13.45. May nominate**

Each political party whose nominee for Governor in the last preceding general election received as many as ten thousand (10,000) votes and less than two hundred thousand (200,000) votes, may nominate candidates for State, district and county offices under the provisions of this law by primary election and they may nominate candidates for State offices and for United States Senator at a State Convention, which shall be held on the Monday preceding the last Tuesday in May, and which shall be composed of delegates selected in the various counties and county conventions held on the second Saturday in May, and which shall

be composed of delegates from the general election precincts in such counties elected therein at primary conventions, held in such precincts on the first Saturday in May. As amended Acts 1959, 56th Leg., p. 335, ch. 165, § 11.

Effective 90 days after May 12, 1959,  
date of adjournment.

#### Art. 13.46. State committee to determine mode

The State Committee of political parties which are not required by law to make nominations by a primary election shall meet at some place in the State to be designated by the chairman thereof on the second Monday in February and shall decide, and by resolution declare, whether they will nominate State, district and county officers by convention or primary elections, and shall certify their decision to the Secretary of State. As amended Acts 1959, 56th Leg., p. 335, ch. 165, § 12.

Effective 90 days after May 12, 1959,  
date of adjournment.

#### Art. 13.47. For district offices

Nominations for district offices made by such parties shall be made by conventions held on the Saturday preceding the last Tuesday in May of the election year, composed of delegates elected thereto at county conventions held on the same day herein prescribed for such county conventions of other parties all of which county conventions shall nominate candidates for county offices of such party. As amended Acts 1959, 56th Leg., p. 335, ch. 165, § 13.

Effective 90 days after May 12, 1959,  
date of adjournment.

#### Art. 13.58. National Convention

Any political party desiring to elect delegates to a national convention shall hold a state convention at such hour and place as may be designated by the State Executive Committee of said party, on the second Tuesday following the second primary election date in 1960, and every four (4) years thereafter. Such convention shall be composed of delegates duly elected at the county conventions as provided for in Section 212. The State Executive Committee shall notify the Secretary of State as to the hour and place at which the State Convention will be held and shall also mail a copy of such notice to each county chairman in the State at least ten (10) days prior to the date of said State Convention. As amended Acts 1959, 56th Leg., p. 335, ch. 165, § 14.

Effective 90 days after May 12, 1959,  
date of adjournment.



## FORMER TITLE 50—ELECTIONS

## Art. 3158a. Precinct and county conventions

Sec. 2. The County Executive Committee of any such political party, at its meeting on the second Monday in March of each general election year, and likewise at a meeting on the second Monday in March of each Presidential election year, shall determine the hour and places of holding precinct convention in such county as well as the hour and place of holding the county convention. Should the County Executive Committee fail to do so, it shall be the duty of the county chairman to make such determination. It shall be the duty of the chairman of such committee to post, or cause to be posted at the courthouse door of such county, at least ten (10) days prior to such precinct conventions, a statement showing the hour and places where such precinct conventions shall be held, as well as the hour and place for holding the county convention. At the same time such chairman shall file with the county clerk as a public record, a copy of such notice giving the hour and places for holding such precinct and county conventions. The fee for filing such notice shall be One Dollar (\$1). Such notice filed with the county clerk shall be open to inspection by the public during office hours of the county clerk. Failure of the county chairman to post or to file the above notice as provided above, shall make such chairman ineligible to be a delegate or alternate delegate, or to hold or vote a proxy at the next succeeding county, district and State conventions of such party.

Should the county chairman fail to file with the county clerk a statement showing the hour and place of holding the precinct conventions in any precinct in such county, then any qualified voter, resident in such precinct, may file with the county clerk a notice of the hour and place of the holding of such precinct convention, and such shall constitute the legal hour and place therefor. Should more than one (1) such qualified voter file such notice then the first filing in point of time shall prevail.

A certificate of the county clerk as to the filing or nonfiling of any such notice provided in this Section shall be conclusive.

The county chairman shall not appoint any precinct chairman during that period of time subsequent to the posting and filing of notices for the precinct conventions, and prior to the time of holding such precinct conventions.

Nothing herein, however, shall prevent qualified voters of a precinct having no chairman from meeting, electing their own chairman and holding a precinct convention of such party, but if an hour and place therefor has been designated in either of the methods provided above, then the convention shall be held at such hour and place.

The county convention of any such party shall be held in a public place at the county seat. As amended Acts 1959, 56th Leg., p. 335, ch. 165, § 15.

Effective 90 days after May 12, 1959,  
date of adjournment.

## TITLE 51—ELEEMOSYNARY INSTITUTIONS

### CHAPTER ONE—GENERAL PROVISIONS

<p>Art. 3174c. Refund of moneys by Board for Texas State Hospitals and Special Schools [New].</p> <p>3179a. Refunds of excess funds received as support payments [New].</p>	<p>Art. 3183b—1. Eminent domain by certain non-profit charitable corporations [New].</p> <p>3183d. Repealed.</p>
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#### Article 3174. Management

Purposes of non-profit corporations, see Non-Profit Corporation Act, art. 2.01.

#### Art. 3174a. Institutions to be known as Texas state hospitals and special schools

The name of Kerrville State Home was changed to Kerrville State Hospital by Acts 1959, 56th Leg., ch. 61, p. 112, § 1, effective Sept. 1, 1959. Section 2 made appropriations available for use of Kerrville State Hospital.

#### Art. 3174b. Board for Texas State Hospitals and special schools

##### Acquiring property for tuberculosis sanatoriums

Sec. 8. The Board for Texas State Hospitals and Special Schools is hereby authorized to negotiate for and to acquire from the United States Government, or any agency thereof, or from any source whatsoever, by gift, purchase, or leasehold, for and on behalf of the State of Texas, for use in the State service, and in the establishment of State tuberculosis hospitals, any lands, buildings, and facilities within the State of Texas, and any personal properties wherever located, and to take title thereto for and in the name of the State of Texas. As amended Acts 1959, 56th Leg., p. 379, ch. 181, § 21.

Effective 90 days after May 12, 1959, date of adjournment.

Change of name of Kerrville State Home, see note under art. 3174a.

Texas Tuberculosis Code, see art. 4477—11.

#### Art. 3174c. Refund of moneys by Board for Texas State Hospitals and Special Schools

Section 1. The Board for Texas State Hospitals and Special Schools is hereby authorized to refund any moneys collected by or paid to the state and to which it was not legally entitled, and to refund any moneys which may be paid to the state by mistake of fact or law or under duress.

Sec. 2. The Board for Texas State Hospitals and Special Schools is hereby authorized to refund any unexpended portions of payments received for the care, treatment, custody or education of any patient or student admitted to any hospital, special school, or other institution under their respective jurisdictions.

Sec. 3. The Legislature may, through its biennial Appropriation Acts for the general support and maintenance of the state government or through any special Appropriation Act, provide moneys from which the

refunds authorized by this Act may be paid. Acts 1959, 56th Leg., p. 837, ch. 376.

Effective 90 days after May 12, 1959,  
date of adjournment.

#### Art. 3179a. Refunds of excess funds received as support payments

Section 1. Each of the institutions under the control and management of the Board for Texas State Hospitals and Special Schools, and The Texas Youth Council are authorized to make refunds of excess funds received by them as payment for support, maintenance, and treatment of patients or students admitted or committed to their jurisdiction when such patients or students die, escape, or are discharged. They may also refund all excess funds deducted from employees' salaries for the payment of food, lodging, and laundry when such employee dies or terminates his employment.

Sec. 2. All moneys received by any of the institutions under the control and management of the Board for Texas State Hospitals and Special Schools and The Texas Youth Council shall be deposited in a local bank approved by the respective governing Boards. Unless otherwise specifically authorized by law, the head of the institution shall transmit such moneys as are deposited in such local bank, less authorized refunds and expenses, to the State Treasurer within seven (7) days after said moneys are deposited in such bank. Acts 1959, 56th Leg., p. 1062, ch. 485.

Section 3 of the Act of 1959 provided that all laws or parts of laws in conflict herewith are hereby repealed; providing, however, that no provision of this Act shall be construed to amend, modify, or repeal any law governing the handling of funds of other agencies of this State.

Emergency. Effective June 1, 1959.

#### Title of Act:

An Act regulating the handling of funds received by institutions under the control and management of the Board for Texas State Hospitals and Special Schools and The Texas Youth Council; providing for repeal of all laws or parts of laws in conflict herewith; and declaring an emergency. Acts 1959, 56th Leg., p. 1062, ch. 485.

#### Art. 3183b—1. Eminent domain by certain nonprofit charitable corporations

##### Nonprofit charitable corporation affiliated with medical center having medical school in county of over 600,000 population

Section 1. Any nonprofit corporation incorporated under the laws of this state for purely charitable purposes and which is directly affiliated or associated with a medical center having a medical school recognized by the Council on Medical Education and Hospitals of the American Medical Association as an integral part of its establishment, and which has for a purpose of its incorporation the provision or support of medical facilities or services for the use and benefit of the public, and which is situated in any county of this state having a population in excess of six hundred thousand (600,000) inhabitants according to the most recent Federal Census shall have the power of eminent domain and condemnation for the purposes set forth in Section 2 and Section 3 of this Act.

##### Acquisition of lands adjacent to medical center for construction, maintenance and operation of facilities

Sec. 2. Any charitable corporation as defined in Section 1 of this Act shall have the power of eminent domain and condemnation for the purpose of acquiring lands adjacent or contiguous (whether or not separated by public thoroughfares) to such medical center upon which are to be con-

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

structured, maintained, and operated as a part of the medical center, facilities dedicated to medical care, teaching, and research for the public welfare, including ancillary or service activities generally and customarily recognized as essential to such facilities in a medical center.

**Acquisition of lands adjacent to medical center for purpose of conveying or leasing; use of lands**

Sec. 3. Any charitable corporation as defined in Section 1 of this Act shall have the power of eminent domain and condemnation for the purpose of acquiring lands adjacent or contiguous (whether or not separated by public thoroughfares) to such medical center for the purpose of conveying or leasing such lands in the manner set forth in Section 4 of this Act to any nonprofit corporation, association, foundation or trust for the construction, maintenance, and operation of facilities to be a part of the medical center and dedicated to medical care, teaching, or research for the public welfare, including ancillary or service activities generally and customarily recognized as essential to such facilities in a medical center.

**Authority and power to control property acquired; deeds of conveyance or lease**

Sec. 4. Any charitable corporation as defined in Section 1 of this Act in the exercise of the power of eminent domain conferred herein shall have full authority and power to control the property acquired for the purposes authorized herein, and shall have the authority to convey such property or to lease the same for a period of ninety-nine (99) years with an option to renew. Any deed of conveyance or lease as provided in Section 3 of this Act shall set forth the defeasance or conditions under which the property is conveyed or leased and the fact that it is dedicated to medical care, teaching, or research for the public welfare.

**Reversion of title to original owner**

Sec. 5. It is expressly provided that if any property acquired under authority of this Act is not used for the purpose of medical care, teaching, or research or essential ancillary and service activities, but use for such purposes is abandoned, title to the property shall revert to the original owner from whom such property was acquired by condemnation pursuant to this Act, or to his heirs, devisees, or assigns.

**Procedures and conditions**

Sec. 6. The power of eminent domain granted by this Act shall be in accordance with the procedure, conditions, and provisions as prescribed in Title 52, Revised Civil Statutes of Texas, 1925, as amended. Acts 1959, 56th Leg., p. 367, ch. 178.

Effective 90 days after May 12, 1959, date of adjournment.

Section 7 of the Act of 1959 contained a severability clause.

Eminent domain, procedure, see art. 3264.

General powers of nonprofit corporations, see Non-Profit Corporation Act, § 2.02, set out in pocket part to Vol. 3A.

Medical department of University of Texas, see art. 2606b.

Medical school and dental college, see art. 2603f.

Powers,

Religious and charitable corporations, see art. 1396.

Educational corporations, see art. 1411.

**Art. 3183d. Repealed. Acts 1959, 56th Leg., p. 379, ch. 181, § 28. Eff. 90 days after May 12, 1959, date of adjournment**

Article 3183d was derived from Acts 1953, 53rd Leg., p. 46, ch. 37 and related to conveyances by counties in considera-

tion of establishment of a tuberculosis sanatorium. See, now, art. 4477—11.

Effect of repeal, see note under art. 4477—11.

### CHAPTER THREE—OTHER INSTITUTIONS

#### McKNIGHT STATE TUBERCULOSIS HOSPITAL

Art.

3238c. Repealed.

#### TEXAS SCHOOL FOR THE DEAF

**Art. 3203. 190 To teach printing**

Education and maintenance of totally deaf and blind or totally blind and non-speaking children, see art. 2675c—2.

#### TEXAS SCHOOL FOR THE BLIND

**Art. 3206. Repealed. Acts 1953, 53rd Leg., p. 23, ch. 15, § 1. Eff. 90 days after May 27, 1953, date of adjournment**

Education and maintenance of totally deaf and blind or totally blind and non-speaking children, see art. 2675c—2.

**Art. 3207b. Commission; eligibility for appointment; compensation; secretary; expenses and accounts**

Travel Regulations Act of 1959, see art. 6823a.

#### TEXAS BLIND, DEAF AND ORPHAN SCHOOL

**Art. 3221. 210 Powers and duties of Board of Control**

Education and maintenance of totally deaf and blind or totally blind and non-speaking children, see art. 2675c—2.

#### McKNIGHT STATE TUBERCULOSIS HOSPITAL

**Arts. 3238b—3246. Repealed. Acts 1959, 56th Leg., p. 379, ch. 181, § 28. Eff. 90 days after May 12, 1959, date of adjournment**

Article 3238c was derived from Acts 1955, 54th Leg., p. 18, ch. 15 and changed the name of McKnight State Sanatorium to McKnight State Tuberculosis Hospital.

Prior to repeal, art. 3241 was amended by Acts 1953, 53rd Leg., p. 449, ch. 135, § 1.

Effect of repeal, see note under art. 4477—11.

See, now, art. 4477—11.

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

Arts. 3248-3251a. Repealed. Acts 1959, 56th Leg., p. 379, ch. 181, § 28.  
Eff. 90 days after May 12, 1959, date of adjournment

Effect of repeal, see note under art. 4477-11.  
See, now, art. 4477-11.

Arts. 3254a, 3254a-1. Repealed. Acts 1959, 56th Leg., p. 379, ch. 181,  
§ 28. Eff. 90 days after May 12, 1959, date of adjournment

Effect of repeal, see note under art. 4477-11.  
See, now, art. 4477-11.

Arts. 3254d, 3254d-1. Repealed. Acts 1959, 56th Leg., p. 379, ch. 181,  
§ 28. Eff. 90 days after May 12, 1959, date of adjournment

Effect of repeal, see note under art. 4477-11.  
See, now, art. 4477-11.

Art. 3256. Rules and regulations

Effect of repeal, see note under art. 4477-11.

## TITLE 52—EMINENT DOMAIN

Article 3264. 6506, 6528. Procedure

Eminent domain by certain nonprofit  
charitable corporations, see art. 3183b-1.

Art. 3264a. Eminent domain by counties

Condemnation of rights of way and ease-  
ments within municipalities by counties,  
see art. 6674n-2.

Art. 3266. 6507-28 General provisions

3. Commissioners shall receive for their services an amount fixed  
by the Commissioners Court, who shall set the fee of the commissioners  
at any amount they may deem reasonable, but not less than Five Dollars  
(\$5) for each day they are engaged in the performance of their duties. As  
amended Acts 1955, 54th Leg., p. 537, ch. 166, § 1; Acts 1959, 56th Leg.,  
p. 874, ch. 399, § 1.

Emergency. Effective May 30, 1959.  
Tex.St.Supp. '60-19

## TITLE 55—EVIDENCE

## 1. WITNESSES AND EVIDENCE

Art.

3731c. Photographic or photostatic copies of written instruments; use in judicial or administrative proceedings [New].

## 1. WITNESSES AND EVIDENCE

**Art. 3731c.** Photographic or photostatic copies of written instruments; use in judicial or administrative proceedings

Any copy or reproduction of a writing or written instrument, by photographic, photostatic, microfilm or other processes which accurately reproduces or forms a durable medium for reproducing the originals of any such writing or written instrument, can be used and its use shall be permitted in any judicial or administrative proceeding or trial, including the taking of depositions, where the party using the same, at the time of its offer in evidence either produces the original or reasonably accounts for its absence, or where there is no bona fide dispute as to its being an accurate reproduction of the original. This Act shall be cumulative of any other statutory or common law relating to the subject hereof. Acts 1959, 56th Leg., p. 867, ch. 393, § 1.

Effective 90 days after May 12, 1959, date of adjournment.

Photographed or filmed records of state highway department, see art. 6663a.

Photographic duplication of public records, see art. 6574b.

**Art. 3737d—1.** Court interpreters in certain judicial districts in counties bordering International Boundary

Section 1. In any county, which is a part of two (2) or more Judicial Districts and in which there are two (2) or more District Courts, having regular terms, one (1) county of said district bordering on the International Boundary between the United States and the Republic of Mexico, or in any county bordering on the International Boundary of the United States and the Republic of Mexico, which said county forms a part of a Judicial District composed of four (4) counties, or in any county bordering on the International Boundary of the United States and the Republic of Mexico, and which county has three (3) or more District Courts or Judicial Districts wholly within said county, or in any county bordering on the Gulf of Mexico, and which said county has four (4) or more District Courts or Judicial Districts of which two (2) or more are wholly within said county, the Commissioners Court of said county, upon request of the District Judge, or District Judges, after determination by said Judges of the need therefor, shall appoint such court interpreters on a full or part-time basis as may be necessary to properly carry out the function of said courts; that such interpreters shall be well versed in and competent to speak the Spanish language, as well as the English language; and shall each receive a salary as fixed by the Commissioners Court of said county, but not to exceed Four Thousand, Eight Hundred Dollars (\$4,800) per year, payable in equal monthly payments, out of the General Fund of such county."

Sec. 2. The Commissioners Court shall appoint such interpreter or interpreters as shall be designated by the District Judges requesting such appointment. Acts 1955, 54th Leg., p. 860, ch. 323, as amended Acts 1959, 56th Leg., p. 133, ch. 79, § 1.

Emergency. Effective April 14, 1959.

## TITLE 61—FEES OF OFFICE

## CHAPTER ONE—GENERAL PROVISIONS

Art. 3883i. Maximum and minimum salaries; certain precinct, county and district officials in certain counties

## Counties of 195,001 to 600,000

Sec. 5. In each county in the State of Texas having a population of at least one hundred ninety-five thousand and one (195,001) inhabitants and less than six hundred thousand (600,000) inhabitants according to the last preceding Federal Census, the Commissioners Courts shall fix the salaries of the county and district officials named in this Act as not more than Twelve Thousand Dollars (\$12,000) per annum; provided, however, that no salary shall be set at a figure lower than that actually paid on the effective date of this Act.

Provided, however, the Commissioners Court of Tarrant County, Texas, shall provide that the Criminal District Attorney of Tarrant County, Texas, shall hereafter receive in addition to expenses and all other emoluments of his office an annual salary of Fourteen Thousand Four Hundred Dollars (\$14,400). As amended Acts 1959, 56th Leg., 1st C.S., p. 17, ch. 4, § 1.

Effective 90 days after June 16, 1959, date of adjournment.

## Veterans county service officers; salaries

Sec. 7a. The salaries of Veterans County Service Officers shall be fixed by the Commissioners Court of each county in the following manner:

(a) In each county in the State of Texas having a population of less than twenty thousand (20,000) inhabitants according to the last preceding Federal Census, not more than Five Thousand, Seven Hundred and Fifty Dollars (\$5,750) per annum;

(b) In each county in the State of Texas having a population of at least twenty thousand (20,000) and not more than forty-six thousand (46,000) inhabitants according to the last preceding Federal Census, not more than Seven Thousand Dollars (\$7,000) per annum;

(c) In each county in the State of Texas having a population of at least forty-six thousand and one (46,001) and not more than ninety-eight thousand (98,000) inhabitants according to the last preceding Federal Census, not more than Seven Thousand, Five Hundred Dollars (\$7,500) per annum;

(d) In each county in the State of Texas having a population of at least ninety-eight thousand and one (98,001) and not more than one hundred and ninety-five thousand (195,000) inhabitants according to the last preceding Federal Census, not more than Eight Thousand Dollars (\$8,000) per annum;

(e) In each county in the State of Texas having a population of at least one hundred ninety-five thousand and one (195,001) inhabitants and less than six hundred thousand (600,000) inhabitants according to the last preceding Federal Census, not more than Eight Thousand, Five Hundred Dollars (\$8,500) per annum;

(f) In each county in the State of Texas having a population of six hundred thousand (600,000) or more inhabitants according to the last



preceding Federal Census, not more than Nine Thousand Dollars (\$9,000) per annum. Added Acts 1959, 56th Leg., p. 861, ch. 387, § 1.

Effective 90 days after May 12, 1959, date of adjournment.

Section 2 of the Act of 1959 repealed all conflicting laws and parts of laws.

**Dallas County; enumeration of salaries and restrictions**

Sec. 8. (a) In Dallas County, Texas, the Commissioners Court of such County shall fix the salaries of the following county officials in the following manner:

The salary of the County Judge shall be Sixteen Thousand Dollars (\$16,000) per annum; the County Commissioners, Thirteen Thousand, Two Hundred Dollars (\$13,200); the Criminal District Attorney, not less than Ten Thousand Dollars (\$10,000) nor more than Sixteen Thousand Dollars (\$16,000); Tax Assessor and Collector, not less than Ten Thousand Dollars (\$10,000) nor more than Fifteen Thousand Dollars (\$15,000), provided, however, that the total compensation received by the Tax Assessor and Collector, including all additional fees and compensation, shall not exceed Sixteen Thousand Dollars (\$16,000) per annum in the aggregate; Probate Judge, not less than Ten Thousand Dollars (\$10,000) nor more than Fifteen Thousand, Two Hundred Dollars (\$15,200); Sheriff, not less than Ten Thousand Dollars (\$10,000) nor more than Fifteen Thousand, Two Hundred Dollars (\$15,200); Judges of the County Courts at Law and County Criminal Courts, not less than Ten Thousand Dollars (\$10,000) nor more than Fourteen Thousand, Four Hundred Dollars (\$14,400); County Clerk and District Clerk, not less than Ten Thousand Dollars (\$10,000) nor more than Fourteen Thousand, Four Hundred Dollars (\$14,400); County Purchasing Agent, not less than Ten Thousand Dollars (\$10,000) nor more than Twelve Thousand, Five Hundred Dollars (\$12,500); Assistant County Purchasing Agent, not less than Five Thousand Dollars (\$5,000) nor more than Seven Thousand, Five Hundred Dollars (\$7,500); County Engineer, not less than Ten Thousand Dollars (\$10,000) nor more than Thirteen Thousand, Two Hundred Dollars (\$13,200); Justices of the Peace and Constables, not more than Eleven Thousand Dollars (\$11,000) per annum, to be paid in equal monthly installments; provided, however, that the Justices of the Peace and Constables whose precincts lie wholly or in part in cities having a population of four hundred and thirty thousand (430,000), or more, according to the last preceding Federal Census, shall receive not less than Ten Thousand Dollars (\$10,000) per annum; which sums shall be paid in twelve (12) equal monthly installments out of the General Fund of such County. As amended Acts 1959, 56th Leg., 2nd C.S., p. 167, ch. 43, § 1.

Emergency. Effective Aug. 5, 1959.

Section 2 of the amendatory Act of 1959, 56th Leg., 2nd C.S., p. 167, ch. 43, provided: "All other salary and compensation laws

applicable to the officials named in this Act are hereby repealed."

**Art. 3886h. Compensation of district attorney and assistants in 34th District**

Section 1. The District Attorney of the Thirty-fourth Judicial District of this State shall be paid a salary in an amount not to exceed Twelve Thousand Dollars (\$12,000) per year. The First Assistant District Attorney of said Thirty-fourth Judicial District shall receive a salary not to exceed Ten Thousand Dollars (\$10,000) per year; and the other Assistant District Attorneys and Investigators in said District shall receive salaries not to exceed Seven Thousand Dollars (\$7,000) a year.

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

Sec. 2. The Commissioners Court of El Paso County, Texas, in said Thirty-fourth Judicial District, is hereby authorized to pay the salaries of the Assistants and Investigators as provided in Section 1 of this Act, and to supplement the salary of the District Attorney paid by the State of Texas in such an amount that the total salary paid shall not exceed the maximum provided for in Section 1 hereof. Nothing herein shall affect the present law relating to the manner of selecting, determining the number, and fixing the amount of salaries to be paid the First Assistant District Attorney, the Assistant District Attorneys and Investigators except as herein provided. Acts 1953, 53rd Leg., p. 21, ch. 12, as amended Acts 1957, 55th Leg., p. 862, ch. 378, § 1; Acts 1959, 56th Leg., 1st C.S., p. 38, ch. 15, § 1.

Effective 90 days after June 16, 1959, date of adjournment.

Section 2 of the amendatory Act of 1959 contained a severability clause.

### Art. 3912e. Method of compensation of district and certain designated county and precinct officers

#### Payment of fees or commissions

Section 1. No district officer shall be paid by the State of Texas any fees or commissions for any service performed by him; nor shall the State or any county pay to any county officer in any county containing a population of twenty thousand (20,000) inhabitants or more according to the last preceding Federal Census any fee or commission for any service by him performed as such officer; provided, however, that the assessor and collector of taxes shall continue to collect and retain for the benefit of the Officers' Salary Fund or funds hereinafter provided for, all fees and commissions which he is authorized under law to collect; and it shall be his duty to account for and to pay all such moneys received by him into the fund or funds created and provided for under the provisions of this Act; provided further, that the provisions of this Section shall not affect the payment of costs in civil cases or eminent domain proceedings by the State, but all such costs so paid shall be accounted for by the officers collecting the same, as they are required under the provisions of this Act, to account for fees, commissions and costs collected from private parties; provided further, that the provisions of this Section shall not affect the payment of fees and commissions by the State or County for services rendered by County Officers in connection with the acquisition of rights of way for public roads or highways, and provided that such fees and commissions shall be deposited into the Officers' Salary Fund of the County by the County Officer collecting such fee. As amended Acts 1959, 56th Leg., p. 35, ch. 23, § 1.

Emergency. Effective March 10, 1959.

Section 3 of the amendatory Act of 1959 repeals all conflicting laws and parts of laws to the extent of conflict only.

#### Payment of salaries in lieu of fees

Sec. 3. In all cases where the Commissioners Court shall have determined that county officers or precinct officers in such county shall be compensated for their services by the payment of an annual salary, neither the State of Texas nor any county shall be charged with or pay to any of the officers so compensated, any fee or commission for the performance of any or all of the duties of their offices but such officers shall receive said salary in lieu of all other fees, commissions or compensation which they would otherwise be authorized to retain; provided,

however, that the assessor and collector of taxes shall continue to collect and retain for the benefit of the Officers' Salary Fund or funds hereinafter provided for all fees and commissions which he is authorized under law to collect; and it shall be his duty to account for and to pay all such moneys received by him into the fund created and provided for under the provisions of this Act; provided further, that the provisions of this Section shall not affect the payment of costs in civil cases or eminent domain proceedings by the State but all costs so paid shall be accounted for by the officers collecting the same, as they are required under the provisions of this Act to account for fees, commissions and costs collected from private parties, providing further that the provisions of this Section shall not affect the payment of fees and commissions by the State or County for services rendered by County Officers in connection with the acquisition of rights of way for public roads or highways, and provided that such fees and commissions shall be deposited into the Officers' Salary Fund of the County by the County Officer collecting such fee. As amended Acts 1959, 56th Leg., p. 35, ch. 23, § 2.

Emergency. Effective March 10, 1959.

Art. 3912e—4c. District, county and precinct officers in counties of 600,000 population

*Repeal of salary and compensation laws applicable to district, county and precinct officers in Dallas county, see note under art. 3883i, § 8.*

CHAPTER TWO—ENUMERATION

Art. 3945. 3878, 2472, 2408 Notary public

Notaries public shall receive the following fees:

Protesting a bill or note for non-acceptance or non-payment, register and seal .....	\$3.00
Each notice of protest .....	.50
Protesting in all other cases, for each 100 words .....	.50
Certificate and seal to such protest .....	.50
Taking the acknowledgment or proof of any deed or other instrument in writing, for registration, including certificate and seal .....	.50
Taking an acknowledgment of a married woman to any deed or other instrument of writing authorized to be executed by her, including certificate and seal .....	.50
Administering an oath or affirmation with certificate and seal .....	.50
All certificates under seal not otherwise provided for .....	.50
Copies of all records and papers in their office, including certificate and seal, if less than 200 words .....	.50
If more than 200 words, for each 100 words in excess of 200 words, in addition to the fee of fifty cents .....	.25
All notarial acts not provided for .....	.50
Taking the depositions of witnesses, for each 100 words ...	.15
Swearing a witness to depositions, making certificate therefor with seal, and all other business connected with taking such deposition .....	.50"

As amended Acts 1959, 56th Leg., p. 986, ch. 461, § 1.

Emergency. Effective May 30, 1959.

**TITLE 67—FISH, OYSTER, SHELL, ETC.**

<b>Chap.</b>		<b>Art.</b>
<b>5. Texas Shrimp Conservation Act [New]</b>		<b>4075b</b>

**CHAPTER FIVE—TEXAS SHRIMP CONSERVATION  
ACT [NEW]**

Art.  
4075b. Texas Shrimp Conservation Act.

**Art. 4075b. Texas Shrimp Conservation Act**

**Short title; public policy**

Section 1. This Act shall be known as the "Texas Shrimp Conservation Act" and it is hereby declared by the Legislature of the State of Texas to be the public policy of this State that the shrimp resources of the State of Texas be conserved and protected from depletion and waste in order that the people of Texas and their posterity may enjoy the most reasonable and equitable privileges in the ownership and taking of such shrimp resources, and that the shrimp industry of Texas be protected from unlawful encroachment and be promoted and fostered consistent with the general good of the people of this State and to those ends, and in the interest of achieving fair, impartial, and uniform law enforcement, it is further declared by the Legislature of Texas to be the Public Policy of this State that any and all laws, acts, bills, rules, regulations, proclamations or orders relating to shrimp or the shrimp industry shall be carried out under this Act, any other provision of the law to the contrary notwithstanding; provided however nothing in this Act shall be construed to affect or repeal any existing laws that close any bay or other area of the inside waters to the taking or catching of shrimp throughout the entire year.

**Research and studies; statistical information; reports; findings**

Sec. 2. It shall be the duty of the Game and Fish Commission to conduct, or cause to be conducted through any other State Agency that said Commission may designate, continuous research, investigations and studies of the supply, economic value, environment and breeding habits of the different species of shrimp, as well as the factors affecting their increase or decrease, particularly with reference to the use of trawls, nets or other devices for the taking of shrimp, and with reference to industrial and other pollution of waters naturally frequented by shrimp, and to any and all other factors that enter into a reduction or an increase in the supply of the shrimp resources of Texas. The Commission is hereby directed to gather statistical information on the marketing and processing, and on the harvesting and catching, of shrimp landed at points in the State of Texas. The information shall set forth the quantity, in number of pounds, of shrimp landed at points in Texas, the waters from which taken, and the names of the various species. The Game and Fish Commission shall prepare forms for reports which shall be furnished to those persons licensed under this Act to unload shrimp within Texas who shall make monthly reports to the Commission on said forms, not later than the tenth (10th) day of each month. Pursuant to and based upon such

studies and reports, said Commission shall enter its findings of fact with respect thereto in the permanent records of said Commission, which records shall be kept current and up-to-date as nearly as practicable and such findings of facts shall be printed in the form of a report and presented to the Governor and each Member of the Legislature prior to each Regular Session of the Legislature.

#### Definitions

Sec. 3. The following words, terms, and phrases used in this Act are hereby defined as follows:

(a) "Coastal Waters," as that term is used herein, means all of the salt waters of the State of Texas, including that portion of the Gulf of Mexico within the jurisdiction of this State, and for the purposes of this Act, said coastal waters of Texas are divided into two (2) classes, namely, the "Inside Waters" and the "Outside Waters." The term "Outside Waters," as that term is used herein, shall mean the salt waters of this State contiguous to, and seaward from, the shore line of the State of Texas along the Gulf of Mexico as such shore line is projected and extended in a continuous and unbroken line, following the contours and meanders of such shore line, across bays, inlets, passes, rivers, streams and other bodies of water; the same being that portion of the Gulf of Mexico extending from such shore line seaward and within the jurisdiction of the State of Texas. The term "Inside Waters," as that term is used herein, shall mean all bays, inlets, outlets, passes, rivers, streams and other bodies of water landward from such shore line and contiguous to, or connected with, but not a part of, the Gulf of Mexico and within which the tide regularly rises and falls and in which salt water shrimp are found or into which salt water shrimp migrate.

(b) "Commission," as used herein, means the Game and Fish Commission of the State of Texas.

(c) "Person," as used herein, means any person, firm, partnership, company, corporation, co-operative, association, or any legal entity whatsoever.

(d) "Possess" in its different tenses, as used herein, includes the act of having in possession or control, keeping, detaining, restraining or holding, as owner, or under a fishing ley, or as agent, bailee, or custodian of another; and whenever possession, sale, purchase, unloading or other handling of shrimp is prohibited, reference is made and intended, and shall apply, equally to such shrimp coming from without the State as to that taken within the State unless otherwise specifically provided.

(e) A "Commercial Gulf Shrimp Boat," as that term is used herein, is any boat or vessel which is required to be numbered or registered by and under the laws of the United States of America or of the State of Texas, and which is used for the purpose of taking or catching, or assisting in taking or catching, shrimp from the "outside" waters of the State of Texas for pay, or for the purpose of sale, barter or exchange, or which is used for the purpose of taking or catching, or assisting in taking or catching, shrimp from salt waters outside of the State of Texas for pay or for the purpose of sale, barter or exchange, and unloading same at a port or other point in Texas without having been previously unloaded in some other state or foreign country.

(f) A "Commercial Bay-Bait Shrimp Boat," as that term is used herein, is any boat or vessel which is required to be numbered or registered by and under the laws of the United States of America or the State of Texas, and which is used for the purpose of taking or catching, or assisting in taking or catching, shrimp from the inside waters of the State of Texas for pay, or for the purpose of sale, barter or exchange.

(g) A "Shrimp House Operator," as used herein, means any person other than a "Wholesale Fish Dealer" as that term is defined by Section 1(b) of Chapter 29, Forty-third Legislature of Texas, First Called Session, 1933,<sup>1</sup> who operates a shrimp house, plant or other establishment for pay for the purpose of unloading and handling from Commercial Gulf Shrimp Boats or Commercial Bay-Bait Shrimp Boats, fresh shrimp caught or taken from the coastal waters of this State, or from salt waters outside of this State and brought into this State without having been previously unloaded in some other State or foreign country.

(h) A "Bait-Shrimp Dealer," as used herein, is any person other than a "Wholesale Fish Dealer" as that term is defined by Section 1(b) of Chapter 29, Forty-third Legislature of Texas, First Called Session, 1933, who operates a shrimp house, plant or other establishment in any coastal county of this State for pay for the purpose of handling shrimp caught or taken for bait purposes from the coastal waters of this State for retail or wholesale purposes, either fresh or frozen.

(i) "Sports Bait-Shrimp Trawl," as used herein, means any trawl, net or rig used for the purpose of taking or catching, or attempting to take or catch, shrimp for bait for one's own personal use.

<sup>1</sup> Vernon's Ann.P.C. art. 934a.

#### Limits for inside and outside waters

Sec. 4. (a) It shall be unlawful for any person (except for catching bait shrimp as otherwise herein provided) to take or catch, or attempt to take or catch, at any time, in either the inside waters or in the outside waters of this State, any amount of white shrimp which shall average in count of individual specimens more than sixty-five (65) headless fresh ungraded white shrimp to the pound, or which shall average in count more than thirty-nine (39) heads-on fresh ungraded white shrimp to the pound, or for any person (except for catching bait shrimp as otherwise herein provided), at any time, to possess in the State of Texas, or have on board any boat or vessel within the coastal waters of this State, or to buy, sell, unload, transport or handle in any way, in the State of Texas, any headless fresh ungraded white shrimp of more than sixty-five (65) count, or heads-on fresh ungraded white shrimp of more than thirty-nine (39) count, regardless of whether or not such small fresh ungraded white shrimp of said count shall have been caught in the coastal waters of the State of Texas or in waters outside of the State of Texas.

(b) It shall be unlawful for any person (except for catching bait shrimp as otherwise herein provided) to take or catch, or attempt to take or catch, at any time, in either the inside waters or in the outside waters of this State, any amount of brown or pink shrimp which shall average in count of individual specimens more than fifty (50) headless fresh ungraded brown or pink shrimp to the pound, or which shall average in count more than thirty (30) heads-on fresh ungraded brown or pink shrimp to the pound, or for any person (except for catching bait shrimp as otherwise herein provided) at any time, to possess in the State of Texas, or have on board any boat or vessel within the coastal waters of this State, or to buy, sell, unload, transport or handle in any way, in the State of Texas, any fresh ungraded headless brown or pink shrimp of more than fifty (50) count, or fresh ungraded heads-on brown or pink shrimp of more than thirty (30) count, which had been caught or taken in the coastal waters of this State or in waters outside of this State.

(c) The "count" of shrimp, as provided for herein, shall be taken in the presence of any person possessing said shrimp either as owner, employee, agent, bailee, or other custodian, by an officer, agent, deputy or

warden of the Game and Fish Commission who shall select from the entire quantity of shrimp being sampled a minimum of not less than three (3) representative samples for each one thousand (1,000) pounds of either headless or heads-on shrimp, but in any event not less than three (3) samples for the entire quantity of shrimp being sampled; each sample shall consist of a sufficient number of specimens to weigh out five (5) pounds after having been allowed to drain for three (3) minutes; after said sample shall have been weighed and determined to weigh five (5) pounds, the number of specimens in said five (5) pound sample shall be counted, and the count thus obtained shall then be divided by five (5) in order to ascertain the count per pound of such five (5) pound sample; after counts shall have been thus made of all samples taken of such entire quantity of shrimp, the average count per pound of each sample taken shall be totaled and the final average count per pound of the entire quantity of shrimp being sampled shall be determined by dividing that total by the number of samples counted; and such average count per pound so determined shall constitute prima facie evidence of the average count per pound of said shrimp in the entire cargo or quantity of shrimp sampled. Headless and heads-on shrimp shall always be sampled, weighed and counted separately.

**Commercial bay-bait shrimp boat license; fee; display**

Sec. 5. It shall be unlawful for any Commercial Bay-Bait Shrimp Boat to be used for the purpose of taking or catching, or assisting in taking or catching, shrimp from the inside waters of Texas, without the owner thereof having first procured a license, to be known as a Commercial Bay-Bait Shrimp Boat License, from the Commission privileging such boat to be so used within the inside waters of Texas. The fee for a Commercial Bay-Bait Shrimp Boat License shall be Thirty Dollars (\$30) and such License shall be issued for a period of one (1) year and shall expire March 1st of the year following the date of issuance, and shall be secured from and issued by the Commission only during the months of January and February of each year; the License shall include the right to use, operate and tow within the inside waters of this State all shrimp trawls with which said boat is equipped, the use of which is not otherwise prohibited by Law, without the payment of any additional trawl license whatsoever, and said boat shall not be required to also have a "Commercial Fishing Boat License" as provided by Section 3 of Chapter 68 of the Acts of the Fifty-first Legislature of Texas, Regular Session, 1949,<sup>1</sup> or other Statutes of this State; but the captain and each member of the crew of said boat shall be required to have a Commercial Fisherman's License issued by the Commission, and said boat shall be required to be licensed as a Commercial Gulf Shrimp Boat in order to operate within the outside waters of this State; the Commercial Bay-Bait Shrimp Boat License shall be a metal or plastic sign or emblem, of prescribed and uniform character and of a different color or design for each year, at least thirty-two (32) square inches in size, of a distinguishable character, color and design different from the emblem required of a Commercial Gulf Shrimp Boat, issued by the Commission, and shall be prominently displayed on the bow, outside of the wheelhouse, or at other designated point on the outside of said boat as specified by said Commission and on each side of said boat, evidencing the payment of such Boat License.

<sup>1</sup> Vernon's Ann.P.C. art. 934b-2.

**Taking of shrimp in inside waters**

Sec. 6. (a) It shall be unlawful at any time, except for a Commercial Bay-Bait Shrimp Boat operator during the period from August 15th through December 15th, both dates inclusive, of each year (said period being designated as the "open season" for said inside waters for any such Commercial Bay-Bait Shrimp Boat operators) for any person (except for catching bait shrimp as otherwise herein provided) to take or catch, or to attempt to take or catch, shrimp of any species or size, within the inside waters of this State, and further, during said open season it shall be unlawful for any person to take or catch, or attempt to take or catch, shrimp of any sizes or species within the natural or man-made passes leading from the inside waters to the outside waters of this State; provided however, it shall be lawful for any Commercial Bay-Bait Shrimp Boat operator to take, within the inside waters, with a trawl not to exceed twenty-five (25) feet between the boards or the extremes of any other spreading device, not to exceed more than a total of two hundred fifty (250) pounds of heads-on shrimp of any size or species per boat per calendar day, during the closed season of the inside waters, and to sell the same for bait in the manner provided by this Act; provided further however:

(1) During the open season for shrimping in the inside waters of this State as herein provided it shall be unlawful for any person (except for catching bait shrimp as herein otherwise provided) to take or catch, or to attempt to take or catch, shrimp of any size in said inside waters with more than one (1) net, except a try net as hereinafter provided, or with a net of a size exceeding sixty-five (65) feet from board to board or between the extremes of any other spreading device, or to have in use or on board in the inside waters of this State during the closed season thereof more than one (1) set of trawl doors (or other spreading device) and more than one (1) set of try net doors; provided further, that said Commercial Bay-Bait Shrimp Boat operator may sell, during the open season hereof, any shrimp for bait legally caught within the inside waters.

(2) During the open season in the inside waters of this State all shrimping shall be done during the daytime only and it shall be unlawful for any person to take or catch shrimp, or to attempt to take or catch shrimp, or to use or operate any net or trawl in the inside waters of this State for the purpose of taking or catching shrimp, between sunset and sunrise.

(3) It shall be unlawful for any person, at any time, to head any shrimp aboard a boat or vessel within the inside waters of this State or to dump or deposit any shrimp heads in the inside waters of this State, except in artificial passes, canals, or basins.

(b) It shall be unlawful for any person, at any time, to use, or to have in his possession, within the inside waters of this State or on board any boat or vessel within such inside waters, any try net or test net exceeding twelve (12) feet in length from board to board; and it shall be unlawful for any person (except for catching bait shrimp as otherwise herein provided) to take or catch, or attempt to take or catch, any shrimp within the inside waters of this State with, or to have in possession in the State of Texas or on board any boat or vessel within the coastal waters of this State, any trawl, for use in said inside waters, other than a try net or test net with a mesh size, not including the bag, less than one (1) inch square mesh or two (2) inches stretched mesh at the time such trawl is new and unused, and the mesh of the bag of such trawl for use in said



inside waters shall not be less than one (1) inch square mesh or two (2) inches stretched mesh at the time such bag is new and unused.

(c) It shall be lawful for any bona fide licensed Commercial Bay-Bait Shrimp Boat operator to take or catch, or to attempt to take or catch, shrimp of any size or species, for use as bait only, at any time, within the coastal waters of this State, provided:

(1) It shall be unlawful for any bona fide licensed Commercial Bay-Bait Shrimp Boat operator to use in the coastal waters of this State, at any time, for the purpose of taking or catching, or attempting to take or catch, shrimp for bait, more than one (1) net at a time, except for a try net not exceeding five (5) feet as measured from board to board, or to use any net exceeding in size twenty-five (25) feet measured from board to board or between the extremes of any other spreading device, or any net having a mesh size of less than one and one-half (1½) inches stretched mesh at the time such net is new and unused, or to have in use or on board in the inside waters of this State during the closed season thereof more than one set of trawl doors (or other spreading device) and more than one set of try net doors.

(2) It shall be unlawful for any bona fide licensed Commercial Bay-Bait Shrimp Boat operator to take or catch within the coastal waters of this State, at any time more than two hundred fifty (250) pounds of fresh heads-on bait shrimp per boat per calendar day.

(3) It shall be unlawful for any person to process for human consumption any shrimp taken for bait purposes from any of the coastal waters of this State.

(4) There shall be no limitation upon the size by count or otherwise of any shrimp caught or possessed by any bona fide licensed Commercial Bay-Bait Shrimp Boat operator or Bait Shrimp Dealer for use as bait only or by a bona fide sports fisherman for his own use as bait; provided that the quantity of such bait shrimp shall not exceed the amount that may be legally possessed as herein provided.

(5) It shall be unlawful for any person to sell, or to contract to sell, for transportation outside of the State of Texas any shrimp caught for use as bait in any of the coastal waters of this State.

(6) It shall be unlawful for any person to sell, at any time, any bait shrimp, whether fresh or frozen, to any cafe, restaurant, hotel, packer, canner or breeder; and further, it shall be unlawful for any person to sell, at any time, any bait shrimp, whether fresh or frozen, for human consumption to any wholesale or retail dealer, owner or operator of a retail or wholesale fish dealer's truck, shrimp house operator, shrimp processor, freezer, or broker, or for any such designated possible purchasers, to purchase any such bait shrimp as hereinabove provided; and further, it shall be unlawful for any person to sell, buy or use for human consumption any shrimp caught in the coastal waters of Texas for use as bait shrimp, whether such shrimp be fresh or frozen.

**Commercial gulf shrimp boat license; fee; display; taking  
of shrimp in outside waters**

Sec. 7. (a) It shall be unlawful for any Commercial Gulf Shrimp Boat to be used for the purpose of taking or catching, or assisting in taking or catching, shrimp from the outside waters of Texas, or for any such boat which has on board fresh shrimp caught or taken from the outside waters of this State, or from salt waters outside of this State without having been previously unloaded in some other state or foreign country, to unload, or to be permitted to unload, said shrimp at any port or other point in Texas, without the owner thereof having first procured a license, to be known as

a Commercial Gulf Shrimp Boat License, from the Commission privileging such boat to be so used or to so unload its cargo. The fee for a Commercial Gulf Shrimp Boat License shall be Thirty Dollars (\$30) and such license shall expire August 31st following the date of issuance, and said Commercial Gulf Shrimp Boat License shall include the right to use, operate and tow all shrimp trawls with which said boat is equipped, the use of which is not otherwise prohibited by law, without the payment of any additional trawl license whatsoever, and said boat shall not be required to also have a "Commercial Fishing Boat License" as provided for by Section 3 of Chapter 68 of the Acts of the Fifty-first Legislature of Texas, Regular Session, 1949,<sup>1</sup> or other Statutes of this State, but the captain and each member of the crew of said boat shall be required to have a Commercial Fishermen's license issued by the Commission. A metal or plastic plate or emblem of a prescribed and uniform character and of a different color or design for each year, at least thirty-two (32) square inches in size, issued by the Commission, shall be prominently displayed on the bow, outside of the wheelhouse, or at other designated point on the outside of said boat specified by the said Commission and on each side of said boat, evidencing the payment of such Boat License.

<sup>1</sup> Vernon's Ann.P.C. art. 934b-2.

(b) It shall be unlawful for any person to take or catch, or attempt to take or catch, any shrimp, regardless of size or species, in any of the outside waters of the State of Texas from June 1st to July 15th, both dates inclusive, of each year; provided, however, that, based upon sound biological data, the Game and Fish Commission of Texas may, and it is hereby empowered to, change the opening and closing dates of said forty-five (45) day period so as to provide for an earlier period beginning not to exceed fifteen (15) days prior to June 1st, or for a later period ending not to exceed fifteen (15) days after July 15th, provided further, that said closed season shall always be for a period of forty-five (45) days. It shall be unlawful for any person, at any time, to possess in the State of Texas, or to have on board any boat or vessel within the coastal waters of this State, or to buy, sell, unload, transport or handle in any way, in the State of Texas, any such shrimp caught in any of the outside waters of this State during such closed season for said outside waters.

(c) It shall be unlawful for any person (except for catching Bait Shrimp as otherwise herein provided) to catch or take any shrimp within the outside waters of this State with, or to have in possession in the State of Texas or on board any boat or vessel within the coastal waters of this State, any trawl, for use in said outside waters, other than a try net or test net, with a mesh size of less than one (1) inch square mesh or two (2) inches stretched mesh at the time such trawl is new and unused, and the mesh of the bag of such trawl for use in said outside waters shall not be less than one (1) inch square mesh or two (2) inches stretched mesh at the time such bag is new and unused, any try net or test net or bait trawl so used, shall not exceed twelve (12) feet as measured from board to board, or between the extremes of any other spreading device.

**Possession of salt water shrimp after end of season;  
use of nonconforming trawls**

Sec. 8. (a) Salt water shrimp in their fresh state, legally taken in either the inside waters or in the outside waters of this State during the open season thereof, may be had in possession for a period of five (5) days after the end of such open season, but not thereafter except by a bona fide licensed bait dealer or sports fisherman as otherwise provided herein.

(b) All legal trawls in use or on hand at the time of the final passage of this Act which do not conform to the specifications of this Act may nevertheless be used, subject to the other specifications of this Act, not later than May 1st, A.D.1960, and not thereafter, but whenever a trawl which was in use or on hand at the final passage of this Act is replaced it shall be replaced with a trawl conforming to all of the specifications of this Act.

**Shrimp house operator's license; fee**

Sec. 9. It shall be unlawful for any Shrimp House Operator to unload or handle from any Commercial Gulf Shrimp Boat or Commercial Bay-Bait Shrimp Boat fresh shrimp caught or taken from the coastal waters of this State, or from salt waters outside of this State and brought into this State without having been previously unloaded in some other State or foreign country, without the owner thereof having first procured a license, to be known as a Shrimp House Operator's License, from the Commission privileging such Shrimp House Operator to so unload or handle such fresh shrimp. The fee for a Shrimp House Operator's License shall be Fifty Dollars (\$50), and said license shall expire August 31st following the date of issuance.

**Bait-shrimp dealer's license; fee; sale of fish bait**

Sec. 10. (a) It shall be unlawful for any person to engage in the business of a Bait-Shrimp Dealer, as that term is herein defined, without having first procured from the Commission a Bait Shrimp Dealer's License for each bait stand or place of business maintained by such person. The fee for each such Bait Shrimp Dealer's License shall be Fifty Dollars (\$50) and said license shall expire August 31st following the date of issuance. The Commission shall issue such a Bait Shrimp Dealer's License only after said Commission has determined as far as practicable that the applicant for such Bait Shrimp Dealer's License is a bona fide Bait Shrimp Dealer as that term is now or hereafter defined by law and that the applicant has not been engaged in selling bait shrimp for human consumption, and no Bait Shrimp Dealer's License shall be issued to any person who has been convicted of selling, or offering for sale, bait shrimp in violation of law after the effective date of this Act.

(b) This license shall include the right to sell, purchase and handle minnows, fish and other forms of aquatic life for the purpose of sale or resale for fish bait purposes, within the coastal counties of this State. The license for a bait dealer as provided for by Acts of 1933, First Called Session, Forty-third Legislature, Chapter 29, Section 2, and as provided for by Acts of 1933, First Called Session, Forty-third Legislature, Chapter 29, Section 3, as last amended by Acts of 1935, Forty-fourth Legislature, Regular Session, Chapter 345, and Acts of 1945, Forty-ninth Legislature, Chapter 209,<sup>1</sup> shall continue in full force and effect as to all counties except the coastal counties of this State and as to any bait dealer in said coastal counties who do not sell or offer for sale or handle shrimp for sale or resale for bait purposes.

<sup>1</sup> Vernon's Ann.P.C. art. 934a, §§ 2, 3.

**Use of cast nets, dip nets, bait traps or minnow seines;  
sports bait-shrimp trawl license; fee**

Sec. 11. It shall be lawful for any person to take or catch, or attempt to take or catch in the coastal waters of this State, bait shrimp for his own personal use by the use of Cast net, Dip net, Bait trap or minnow seine not larger than twenty (20) feet in length manually operated on foot only

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without the use of any mechanical means or devices; and it shall be lawful for any person to take or catch, or attempt to take or catch, bait shrimp for his own personal use by the use of a "Sports Bait-Shrimp Trawl" as defined herein. Provided, however, it shall be unlawful for any "Sports Bait-Shrimp Trawl" to be in the possession of any person within the coastal waters of this State, without the owner thereof having first procured a license, to be known as a Sports Bait-Shrimp Trawl License, from the Commission privileging such trawl to be used within the coastal waters of this State; provided also, that such trawl shall first have been inspected and properly tagged by the Commission and an inspection and license fee of Three Dollars (\$3) shall have been paid to the Commission, also the license provided for herein shall expire on August 31st following the date of issuance. Provided further, that it shall be unlawful for any person to use or have within his possession within the coastal waters any Sports Bait-Shrimp Trawl having a mesh smaller than one and one-half (1½) inch stretch between the knots; and it shall be unlawful to use or employ doors or other boards or devices to spread or open such trawls which are of greater size and dimensions than twelve (12) by eighteen (18) inches, or a total of two hundred and sixteen (216) square inches, provided further, that it shall be unlawful to have in possession or to use more than one (1) such trawl per boat and the distance between the doors or other boards or spreading device shall not exceed twelve (12) feet. Provided further, that it shall be unlawful for any person taking or catching, or attempting to take or catch, shrimp for his own use, under the provisions of this Act, to have within his possession more than two (2) quarts of shrimp per person, either fresh shrimp with heads on, or frozen shrimp, or both, to be used for bait purposes only, but not otherwise; provided further that any person may take or catch shrimp during the open season for his own personal use provided the catch meets the count requirements of this Act, any other provisions of this Act to the contrary notwithstanding.

**Extension of license; license fees as privilege tax;  
remission of moneys; use**

Sec. 12. (a) Any valid license pertaining to the inside waters expiring after the effective date of this Act and prior to the licensing dates provided for within this Act are hereby expressly declared to be and remain valid licenses until the first day of March, A.D. 1960.

(b) The license fees provided for herein are hereby expressly declared to be a privilege tax for the privilege of taking or catching, attempting to take or catch, buying, selling, unloading, transporting or handling, in any manner, any shrimp within the jurisdiction of this State.

All moneys received from the sale of licenses provided for herein and all moneys received from penalties assessed for violation of this Act, after deduction of fees as allowed by law, shall be remitted to the Game and Fish Commission at Austin not later than the 10th day of the month following the date of collection, and shall be deposited by said Commission in the State Treasury to the credit of the Special Game and Fish Fund.

(The proceeds of such licenses shall be used by the Game and Fish Commission to enforce the provisions of this Act and the laws of this State relating to shrimping, salt water fishing, oystering, and other commercial edible aquatic life.)

**Violations and penalties**

Sec. 13. (a) Any person who shall violate any provision of this Act shall be deemed guilty of a misdemeanor and upon conviction therefor

shall be, for the first offense, fined not less than Two Hundred Dollars (\$200) nor more than Five Hundred Dollars (\$500), or be sentenced to serve not less than fifteen (15) days nor more than thirty (30) days in jail, or shall be punished by both such fine and imprisonment; and, for the second offense, shall be fined not less than Five Hundred Dollars (\$500) nor more than One Thousand Dollars (\$1,000) and shall be confined in the county jail for not less than thirty (30) days nor more than ninety (90) days; and, for the third and all subsequent offenses, shall be fined not less than One Thousand Dollars (\$1,000) nor more than Two Thousand Dollars (\$2,000) and shall be confined in the county jail for not less than ninety (90) days nor more than six (6) months.

(b) Whenever a vessel is involved in the violation of any provision of this Act, without in anywise detracting from or mitigating against the presumption of innocence, the captain of said vessel may be considered primarily responsible for such violation, and each member of the crew may also be held responsible therefor, but the punishment for such violation shall be assessed only against the captain and crew members, or one or more of them, actually found to be guilty thereof. The owner of said vessel shall not be guilty of such violation unless it be also charged and proved that such owner knowingly directed, authorized, permitted, agreed to, or aided or acquiesced in such violation.

(c) Any net, seine, trawl, and trawl door involved in any violation of any provision of this Act shall be forfeited by order of the court imposing the sentence upon any violator, and said forfeited property shall be delivered to the Commission for such disposition as in its discretion it may see fit to make of the same. Upon such property being seized, the owner thereof may secure the release of same pending disposition of any charges involving such property by posting bond with the judge of the court before whom said charges are pending in an amount equal to the value of such seized property as determined and fixed by the judge of said court.

(d) Each day on which a violation occurs shall be considered, and is hereby expressly defined, declared and made a separate, distinct and new offense.

(e) Upon conviction, for the second and all subsequent offenses, of violating any provision of this Act, any and all licenses under which the operations involved in the violation are being conducted, issued by the Commission, shall automatically be cancelled, and such licenses shall not thereafter be renewed or reissued for the periods of time from the date of such conviction and continuing thereafter as follows:

(1) Upon conviction for the second offense: for a period of not less than six (6) months nor more than nine (9) months;

(2) Upon conviction for the third offense and all subsequent offenses: for a period of not less than twelve (12) months nor more than eighteen (18) months.

(f) It shall be unlawful for any person to operate in any manner upon any of the coastal waters of this State without having first secured the proper and appropriate license required by this Act and any person failing or refusing to secure such license shall be guilty of a misdemeanor and upon conviction shall be punished as for a violation of any other provision of this Act.

(g) It shall be unlawful for any person whose license has been cancelled as herein provided to do business without a new license or to possess another license for the prohibited period and any person violating this provision shall be guilty of a misdemeanor and upon conviction therefor shall be punished by a fine of not less than Twenty-five Hundred Dollars

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(\$2,500) nor more than Five Thousand Dollars (\$5,000) and shall be confined in the county jail for not less than six (6) months nor more than one (1) year.

(h) Any "Shrimp House Operator," "Wholesale Fish Dealer," "Retail Fish Dealer," "Wholesale Truck Dealer," "Retail Truck Dealer" or other person holding a license issued by the Commission who knowingly unloads, buys, or handles in any way any shrimp from an unlicensed Commercial Gulf Shrimp Boat, or unlicensed Commercial Bay-Bait Shrimp Boat, or who knowingly unloads, buys or handles in any way any shrimp of a prohibited size, or shrimp which has been caught in either the inside or outside waters of this State during the closed season of such waters, or bait shrimp in violation of any provision of this Act, or any Bait Shrimp Dealer who knowingly unloads, buys or handles in any way from an unlicensed Commercial Gulf Shrimp Board or unlicensed Commercial Bay-Bait Shrimp Boat any bait shrimp, or any Bait Shrimp Dealer who sells any bait shrimp for human consumption, shall be deemed guilty of a misdemeanor and upon conviction shall suffer the same penalties of fine, or imprisonment, or both fine and imprisonment, and automatic cancellation of license, as provided by this Act for the violation of other provisions of this Act.

(i) Charges may be filed, prosecutions maintained, cases tried, and proceedings had, for violation of any provision of this Act, in the county wherein the offense occurs, in the event of a prior conviction of any violation of this Act, at the option of the person filing such charges.

#### Deputies and wardens; patrol vessels or aircraft

Sec. 14. An adequate number of deputies and wardens and of patrol vessels or aircraft shall be employed by the Commission in the coastal counties and coastal waters of this State in enforcing the provisions of this Act and the laws of this State relating to shrimp, salt water fishing, oysters, and other commercial edible aquatic life. Acts 1959, 56th Leg., p. 407, ch. 187.

Emergency. Effective May 20, 1959.

Section 15(a) of the amendatory Act of 1959 repealed Vernon's Ann.P.C. art. 934a, § 3, subs. 5(a, b); section 15(b) repealed Vernon's Ann.P.C. art. 978j note, Nueces County-Shrimp trawl; section 15(c) repealed Vernon's Ann.P.C. art. 952i-11, § 1, pars. 3 and 5; section 15(d) repealed all conflicting laws and parts of laws, to the extent of such conflict.

Tex.St.Supp. '60—20

Section 16 is an effective date provision and section 17 contains a severability clause.

Taking and possessing shrimp, see Vernon's Ann.P.C. art. 952i-11.

Using nets for fish and shrimp in Matagorda Bay and Gulf of Mexico, see Vernon's Ann.P.C. art. 941-2.

## TITLE 70—HEADS OF DEPARTMENTS

## CHAPTER TWO—COMPTROLLER OF PUBLIC ACCOUNTS

- Art.  
4344b. Purpose; construction of laws; reorganization and consolidation of divisions; electronic data processing center [New].
- 4346a. Cancellation of unneeded bonds of public corporations [New].

- Art.  
4348a. Preparation of financial statements and itemized estimates; probable receipts and disbursements; committee on state revenue estimates [New].

## Art. 4344. Certain duties

Rules and regulations of comptroller of public accounts, see Title 122A, Taxation—General, art. 1.10.

## Art. 4344b. Purpose; construction of laws; reorganization and consolidation of divisions; electronic data processing center

(1) It is the purpose of this Act to authorize the Comptroller of Public Accounts to organize and maintain within his department such divisions of service as are necessary for the efficient and orderly conduct of the work of the department. The enumeration in laws prior to this Act of certain designated divisions and chiefs of divisions of the office of the Comptroller of Public Accounts and the imposition of specific duties on named divisions and chiefs of divisions shall not be construed as mandatory and nothing therein shall prohibit the Comptroller of Public Accounts from effecting a reorganization or consolidation of divisions, operations, functions or positions provided for by this Chapter or other laws, in the interest of more efficient and economical management and direction of the office of the Comptroller of Public Accounts.

(2) The Comptroller of Public Accounts is authorized to establish and operate a central electronic computing and data processing center to be used to maintain the central accounting records of the state, to prepare payrolls and other warrants, to audit tax reports, and to perform such other accounting and data processing activities as may be economically and practically adapted to the use of this equipment. In order to provide for the orderly and economical use of this equipment the Comptroller is further authorized to prescribe and revise claim forms, registers, warrants, and other documents submitted in support of payroll or other claims or to support tax or any other payments to the state.

The Comptroller of Public Accounts and any state agency as that term is defined in 'The Interagency Cooperation Act' (codified as Article 4413(32) Vernon's Revised Civil Statutes) may enter into an agreement under the provisions of the Interagency Cooperation Act for electronic computing or data processing services. Added Acts 1959, 56th Leg., p. 704, ch. 324, § 1.

Section 2 of Acts 1959, 56th Leg., p. 704, ch. 324 provided: "The repeal of any law by this Act shall not affect or impair any act done or right, obligation or penalty existing or accrued under the authority of the law repealed; and such law shall be treated as still remaining in force for the purpose

of sustaining any proper action concerning any such act, right, obligation or penalty." Section 3 of the Act of 1959 repealed all conflicting laws and parts of laws to the extent of such conflict.

Emergency. Effective May 30, 1959.

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

### Art. 4346a. Cancellation of unneeded bonds of public corporations

Section 1. Terms used in this Act, unless provided herein to the contrary, shall have the following meanings:

"Public Corporations" shall include counties, cities, districts, authorities, non-profit corporations, public agencies, and all other entities authorized by law to issue bonds which are to be registered in the office of the Comptroller of Public Accounts.

"Comptroller" means the Comptroller of Public Accounts of the State of Texas.

Registered or unregistered bonds of any Public Corporation which have been left in and still remain in the office of the Comptroller may be considered as 'unneeded' after the expiration of five years from the date of the bonds."

Sec. 2. It shall be the duty of the Comptroller, from time to time, to cancel by perforation all unneeded bonds and to return them by mail, express or freight, to the respective issuers, at the expense of such issuers. Provided, that not less than thirty days before he shall thus cancel unneeded bonds of a Public Corporation he shall give notice, by registered or certified mail, to such Public Corporation of the proposed cancellation. Such notice shall be addressed in accordance with the latest information available in the office of the Comptroller, and if the Comptroller receives advice that the written notice is undeliverable because such Public Corporation is no longer in existence, or for any other reason, he shall, in like manner and for a like thirty day period of time, notify the county judge of the county in which the Public Corporation was situated, wholly or partially, of such intended cancellation and of such failure of delivery of the initial notice. Such Public Corporation or such county judge as the case may be, prior to the date fixed for cancellation, upon written notice and upon execution of a receipt in the form prescribed by the Comptroller may repossess such bonds. Any shipping expense involved in such transaction shall be paid by the Public Corporation involved, or by the county whose county judge shall have acted in its behalf. A permanent record shall be made in the office of the Comptroller of any such cancellation or return of unneeded bonds. Acts 1959, 56th Leg., p. 436, ch. 196.

Emergency. Effective May 21, 1959.

### Art. 4348a. Preparation of financial statements and itemized estimates; probable receipts and disbursements; committee on state revenue estimates

a. In preparing the financial statements and in making the itemized estimates required by Article III, Section 49a of the State Constitution, the Comptroller of Public Accounts shall take into consideration his estimate of the probable receipts and disbursements as of August 31st for the then current fiscal year.

The words "probable receipts" shall mean and include all such moneys estimated by the Comptroller to be received by the State through August 31st of the then current fiscal year; and his financial statements shall show the fund or funds to which such receipts are to be credited.

The words "probable disbursements" shall mean, and the Comptroller shall consider and report under such term, only those payments estimated to be made and warrants which will be issued by the State through August 31st of the then current fiscal year.

In addition thereto, for the information of the Governor and the Legislature the Comptroller shall list other outstanding appropriations which



may exist after the end of the then current fiscal year, but they shall not be deducted from the cash condition of the Treasury or the anticipated revenues of the next biennium for the purpose of certification.

It is the Legislative intent that the Comptroller's reports, estimates, and certifications of available funds in each instance shall be based upon the actual or estimated cash condition of the State Treasury and that outstanding and undisbursed appropriations at the end of each biennium shall be considered as probable disbursements of the succeeding biennium in the same manner that earned but uncollected income of a current biennium is considered in probable receipts of the succeeding biennium. The provisions of this Act shall be immediately effective and the Comptroller shall revise his current report and estimates in accordance therewith.

b. In carrying out the duties imposed upon the Comptroller of Public Accounts by Section 49a of Article III of the Constitution of the State of Texas, the Comptroller shall, in submitting to the Legislature and the Governor estimates of anticipated revenues, set forth in his estimate report the detailed calculations and all other pertinent information considered by him in arriving at such estimates.

There is hereby created the Committee on State Revenue Estimates which shall be composed of the Governor, or his duly appointed representative, who shall serve as Chairman, the Director of the Legislative Budget Board, and the State Auditor. The Committee shall carefully review all revenue estimates prepared and submitted by the Comptroller of Public Accounts pursuant to Section 49a of Article III of the Constitution of the State of Texas and shall report the result of such review in an official public document to the Budget Division of the Governor's Office, the Legislature and the Comptroller. The Comptroller shall furnish additional information to the Committee, as it may deem necessary, to clarify any of the revenue estimates contained in the estimate report. Acts 1959, 56th Leg., 1st C.S., p. 9, ch. 1, § 1.

*Emergency. Effective June 16, 1959.*

Section 4 of the Act of 1959, 1st C.S., repealed all conflicting laws and parts of laws to the extent of such conflict.

Section 5 provided: "The inducement for the passage of this Act is to reduce an estimated deficit in the General Revenue Fund as of August 31, 1959; and thereafter to equalize as nearly as practicable the monetary rates of the State's income and expenditure allocations, so as to minimize

the possibility of temporary future deficits in the General Revenue Fund. Therefore, if any Section or provision of this Act shall for any reason be held unconstitutional or invalid in whole or in part, then and in that event this Act shall be invalid and of no force or effect, and the Sections or parts of laws sought to be amended or modified by this Act shall remain in full force and effect."

#### Art. 4357. 4348 Auditing claims and issuing warrants

No warrant shall be prepared except on presentation to the warrant clerk of a properly audited claim, verified by affidavit to its correctness, the proper auditing of which claim shall be evidenced by the initials written thereon by the person auditing the same; and such claim so verified and audited shall be sufficient and the only authority for the preparation of a warrant or warrants. Provided, that any claim for the amount of Fifty Dollars (\$50.00) or less may be presented for payment with or without the affidavit as set forth above; if such claim be presented for payment without such affidavit the claimant must certify under the penalties of perjury that to the best of his knowledge and belief the claim is true and correct, and upon such certificate the Comptroller may issue warrant in payment thereof. No claim shall be paid from appropriations unless presented to the Comptroller for payment

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

within two (2) years from the close of the fiscal year for which such appropriations were made, but any claim not presented for payment within such period may be presented to the Legislature as other claims for which no appropriations are available. No warrant shall be drawn against an appropriation of a special fund unless there is sufficient cash money in the fund in the State Treasury to pay such warrant, and no warrant, general or special, shall be released or delivered by the Comptroller unless there is sufficient balance in the appropriation against which the warrant is drawn to pay such warrant. When a claim has been audited and warrant drawn therefor, the claim shall be numbered with the same number as the warrant; and such claim shall be filed numerically according to class: "general," "special," "pension," respectively. The claims, as paid, shall be filed in such method as may be found most advisable to the Comptroller. After the expiration of two (2) years such claims shall be removed from the files and stored as records.

It is specifically provided, however, that as to all appropriations relating to new construction contracts, and to repair and remodeling projects which exceed the sum of Twenty Thousand Dollars (\$20,000.00), including in either instance furniture and other equipment, architects' and engineering fees, and other related costs, any claim may be presented for payment within four (4) years from the close of the fiscal year for which such appropriations were made. As amended Acts 1953, 53rd Leg., p. 864, ch. 350, § 1; Acts 1957, 55th Leg., p. 1411, ch. 485, § 1; Acts 1959, 56th Leg., p. 809, ch. 366, § 1.

Emergency. Effective June 1, 1959.

Section 2 of the amendatory Act of 1957 repealed all conflicting laws and parts of laws to the extent of such conflict.

## CHAPTER FOUR—ATTORNEY GENERAL

Art.  
4412a. Charitable trusts [New].

Art. 4412a. Charitable trusts

### Definition

Section 1. As used in this Article, the term "charitable trust" includes all gifts and trusts for charitable purposes.

### Attorney General as necessary party to suits or proceedings

Sec. 2. For and on behalf of the interests of the general public of this state in such matters, the Attorney General shall be a necessary party to and shall be served with process, as hereinafter provided, in any suit or judicial proceeding, the object of which is:

a. To terminate a charitable trust or to distribute its assets to other than charitable donees, or

b. To depart from the objects of a charitable trust as the same are set forth in the instrument creating the trust, including any proceedings for the application of the doctrine of cy pres, or

c. To construe, nullify or impair the provisions of any instrument, testamentary or otherwise, creating or affecting a charitable trust, or

d. To contest or set aside the probate of an alleged will by the terms of which any money, property or other thing of value is given, devised or bequeathed for charitable purposes.

**Service of process**

Sec. 3. Process may be served as in other civil suits, or the clerk of the court having jurisdiction, or any interested party, or his attorney, may effect the service of process required by this Article by sending through the United States mail, duly certified or registered, a certified copy of the petition or other instrument by which the suit or proceeding is initiated, to the Attorney General and making and filing in said cause an affidavit reciting the facts of service and attaching thereto the customary postal receipts signed by the Attorney General or any Assistant Attorney General.

**Judgment rendered without service or process upon Attorney General**

Sec. 4. A judgment rendered in any suit or judicial proceeding referred to in this Article without service or process upon the Attorney General shall be void and unenforceable. Any such judgment shall be set aside upon motion of the Attorney General filed at any time thereafter.

**Settlement or compromise of disputes without intervention of court**

Sec. 5. Any dispute, claim or controversy of a character described in Section 2 of this Article, and affecting a charitable trust may be settled or compromised by agreement, with or without the intervention or approval of a court, provided, however, that no such compromise, settlement agreement, contract, or judgment shall be valid or binding unless the Attorney General is a party thereto and joins therein. The Attorney General is expressly authorized to join and enter into such compromises, settlement agreements, contracts, and judgments, as aforesaid, as in his judgment and discretion may be in the best interests of the public.

**Purpose of article**

Sec. 6. It is the purpose of this Article to resolve and clarify what is thought by some to be uncertainties existing at common law with respect to the subject matter hereof. Nothing contained herein, however, shall ever be construed, deemed or held to be in limitation of the common law powers and duties of the Attorney General. Added Acts 1959, 56th Leg., p. 203, ch. 115.

Emergency. Effective April 29, 1959.

Section 2 of Acts 1959, 56th Leg., p. 203, ch. 115, provided that the act should not apply to any suit or judicial proceeding filed prior to the effective date of the act, and that any issue concerning the joinder of the Attorney General as a party should be decided according to existing statutory and common law rules independently of the act.

Section 3 of the Act of 1959 contained a severability clause.

**Title of Act:**

An Act providing that the Attorney General shall be a necessary party to certain judicial proceedings, settlements and compromise agreements affecting charitable trusts, and authorizing settlements with or without the intervention of a court; excepting pending suits from the operation of the Act; providing for severability; and declaring an emergency. Acts 1959, 56th Leg., p. 203, ch. 115.

**CHAPTER FOUR—A—STATE AUDITOR**

Art. 4413a—17. Office of State Auditor; compensation of Auditor and assistants; traveling expenses; duties of First Assistant

Travel Regulations Act of 1959, see art. 6823a.

## TITLE 71—HEALTH—PUBLIC

Chap.	Art.
4B. Texas Tuberculosis Code [New] .....	4477—11

## CHAPTER ONE—HEALTH BOARDS AND LAWS

Art.	Art.
4436a—4. County public health units or centers in counties of more than 100,000 population [New].	4447b. Affidavits of doctor in lieu of vaccination of applicants for admission to schools [New].
4437f. Texas Hospital Licensing Law [New].	4447c. Texas Coordinating Commission for State Health and Welfare Services [New].

## Art. 4417a. Compensation of members of State Board of Health

The nine members of the State Board of Health, excepting the member ex officio, shall receive no fixed salary, but each member shall be allowed, for each and every day in attending the meetings of the Board, the sum of Twenty Dollars (\$20.00) including time spent in travel to and from such meetings, and said members shall be allowed traveling and other necessary expenses while in the performance of official duty, to be evidenced by vouchers approved by the Commissioner of Health, provided no member shall receive more than One Thousand Dollars (\$1,000.00) annually, including expenses. The members of the State Board of Health and the Commissioner of Health shall qualify by taking the constitutional oath of office before an officer authorized to administer oaths within this state, and, upon presentation of such oath of office, together with the certificate of their appointment, the Secretary of State shall issue Commissions to them, which shall be evidence of their authority to act as such. As amended Acts 1959, 56th Leg., 3rd C.S., p. 381, ch 6, § 1.

Effective 90 days after Aug. 6, 1959, date of adjournment.

## Art. 4419. 4528 General duties and powers

Affidavits of doctor in lieu of vaccination of applicants for admission to schools, see art. 4447b.

## Art. 4420. 4536 May enter and inspect

Health inspection of private residences without permission or authority, see Vernon's Ann.P.C., art. 782b.

## Art. 4430. 4548 Duties of city health officer

Affidavits of doctor in lieu of vaccination of applicants for admission to schools, see art. 4447b.

## Art. 4436. 984 Health control in certain cities

In cities of five thousand (5,000) population, or over, the governing body of a city or town whether acting under a special charter or incorporated under the General Laws of Texas, shall have the power to require the filling up, drainage, and regulating of any lot or lots, grounds or yards, or

any other places in the city or town which shall be unwholesome, or have stagnant water therein, or from any other cause be in such condition as to be liable to produce disease; to cause all premises to be inspected and to impose fines on the owners of houses under which stagnant water may be found, or upon whose premises such stagnant water may be found, and to pass such ordinances as they may deem necessary for the purposes aforesaid and for making, filling up, altering or repairing of all sinks, and privies, and directing the mode and material for constructing them in the future, and for cleaning and disinfecting the same; and for cleansing of any house, building, establishment, lot, yard or ground from filth, carrion or other impure or unwholesome matter of any kind; to require the owner of any lot or lots within such city or town to keep the same free from weeds, rubbish, brush and any and all other objectionable, unsightly or unsanitary matter of whatever nature, and if such owner fails or refuses to do so, within ten (10) days after notice in writing, or by letter addressed to such owner at his post office address, or by publication as many as two (2) times within ten (10) consecutive days, if personal service may not be had as aforesaid, or the owner's address be not known, such city or town may do such work or may cause the same to be done and may pay therefor and charge the expenses incurred in doing or having such work done or improvements made, to the owner of such property as herein provided; and to punish any owner or occupant violating the provisions of any ordinance so passed, as aforesaid; and the governing body of such town or city shall also, in addition to the foregoing remedy, have the power to cause any of the improvements above mentioned to be done at the expense of the city or town, on account of the owners, and cause the expense thereof to be assessed on the real estate, or lot or lots upon which such expense is incurred. On filing with the county clerk of the county in which the city or town is situated, a statement by the mayor or city health officer of such city or town of such expenses, such city or town shall have a privileged lien thereon, second only to tax liens and liens for street improvements to secure the expenditure so made, and ten per cent (10%) interest on the amount from the date of such payment. For any such expenditures, and interest, as aforesaid, suit may be instituted and recovery and foreclosure had in the name of the corporation; and the statement so made, as aforesaid, or a certified copy thereof, shall be prima facie proof of the amount expended in any such work or improvements. As amended Acts 1959, 56th Leg., p. 972, ch. 453, § 1.

Effective 90 days after May 12, 1959, date of adjournment.

**Art. 4436a—4. County public health units or centers in counties of more than 100,000 population**

**Construction or acquisition of buildings; improvements; location**

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

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

may be located at any place or places within the county, as may be determined by the Commissioners Court. Payment for such improvements shall be made from the Constitutional Permanent Improvement Fund.

#### Payment for improvements

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

#### Bonds; taxes; time warrants; certificates of indebtedness

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

<sup>1</sup> Article 2368a.

#### Refunding bonds

Sec. 4. Said Commissioners Court shall have the right at all times to issue refunding bonds for the purpose of refunding bonds and certificates issued under the provisions of this Act, subject to the General Laws applicable to refunding bonds by counties and without the necessity of any notice or right to referendum vote. Said Commissioners Court shall also have the right at all times to issue refunding bonds for the purpose of refunding time warrants issued hereunder, subject to the provisions of the Bond and Warrant Law of 1931, as amended.<sup>1</sup>

<sup>1</sup> Article 2368a.

Cumulative effect of act

Sec. 5. This Act shall be cumulative of all other laws, general and special, relating to the subject matter hereof. Acts 1959, 56th Leg., p. 559, ch. 250.

Emergency. Effective May 26, 1959.

Section 6 of the Act of 1959 contained a severability clause.

Art. 4437f. Texas Hospital Licensing Law

Title

Section 1. This Act may be cited as the "Texas Hospital Licensing Law."

Definitions

Sec. 2. For the purpose of this Act:

(a) The term "person" means any individual, firm, partnership, corporation, association or joint stock company, and includes any receiver, trustee, assignee, or other similar representative thereof.

(b) The term "hospital" means any institution, place, building, dwelling, or abode, whether organized for profit or non-profit, general or special, private, public, or governmental, offering or making available any medical and/or surgical services, facilities, or equipment for a period of time extending either over night or beyond twenty-four (24) hours, for two (2) or more nonrelated individuals, whereby such services, facilities, or equipment can, may, or are used for and in connection with the observation, care, diagnosis or treatment of individuals who are, or may be, suffering from any disease or disorder, mental or physical, or any physical deformity or injury.

The definition of "hospital" specifically includes all places where pregnant females are received, cared for, or delivered, irrespective of the number of patients received or the duration of their stay.

The definition of "hospital" does not include those facilities licensed pursuant to the provisions of Article 4442c, Acts 1953 Legislature, page 1005, Chapter 413.

The definition of "hospital" does not include those institutions licensed pursuant to Articles 5547-88 to Articles 5547-99 of the Mental Health Code.

The definition of "hospital" does not include facilities maintained or operated by the Federal Government or agencies thereof, nor does it include facilities maintained or operated by the State of Texas or agencies thereof. The definition of "hospital" does, however, include those facilities maintained or operated by "governmental" or "governmental unit" as those terms are defined in Section 2, subsection (d) of this Act.

(c) The term "licensing agency" means the State Board of Health.

(d) The term "governmental" or "governmental unit" means any hospital district, county, municipality or other political subdivision, or any department, division, board, or other agency of any of the foregoing.

(e) The term "medical staff" means that physician or group of physicians, licensed to practice medicine by the Texas State Board of Medical Examiners, who by action of the governing body of a hospital, are privileged to work within and use the facilities of a hospital for or in connection with the observation, care, diagnosis or treatment of individuals who are, or may be, suffering from any disease or disorder, mental or physical, or any physical deformity or injury.

**Purpose of act**

Sec. 3. The purpose of this Act is to protect and promote the public health and welfare by providing for the development, establishment, and enforcement of certain standards in the construction, maintenance, and operation of hospitals.

**Necessity of license**

Sec. 4. After January 1, 1960, no person or governmental unit acting severally or jointly with any other person or governmental unit shall establish, conduct, or maintain a hospital in this state without a license obtained under the provisions of this law.

**Rules and regulations; licensing director; appointment; duties; qualifications**

Sec. 5. The Licensing Agency, with the advice of the Hospital Licensing Advisory Council, shall adopt, amend, promulgate, and enforce such rules, regulations, and minimum standards as may be designed to further the purposes of this Act. Provided, however, that the rules, regulations, or minimum standards so adopted, amended, promulgated, or enforced shall be limited to safety, fire prevention, and sanitary provisions of hospitals as defined in this Act. Provided, however, that any rules, regulations, or standards set shall first be approved by the State Board of Health, and after they have been so approved, shall be approved also by the Attorney General as to their legality, and then filed with the Secretary of State, and no such rule or regulation shall be effective until it has been filed with the Secretary of State.

The Commissioner of Health shall appoint, with the advice and consent of the State Board of Health, a person to serve in the capacity of Hospital Licensing Director. The duties of such Hospital Licensing Director shall be the administration of this Act and he shall be directly responsible to the Licensing Agency. Any person so appointed as Hospital Licensing Director must possess the following qualifications: He shall have had at least five (5) years experience and/or training in the field of hospital administration, be of good moral character, and a resident of the State of Texas for a period of not less than three (3) years.

**Compliance with rules and regulations**

Sec. 6. Any hospital which is in operation at the time of promulgation of any applicable rules or regulations or minimum standards under this Act shall be given a reasonable length of time within which to comply with such rules, regulations and standards, but in no event longer than six (6) months. Provided, however, that the Licensing Agency may extend the length of time within which to comply with such rules beyond six (6) months upon sufficient showing that it will require additional time to complete compliance with such rules, regulations, and standards.

**Applications for license; approval; fees; disposition**

Sec. 7. Applications for license shall be made to the Licensing Agency upon forms provided by it, and shall contain such information as the Licensing Agency may reasonably require. It shall be necessary that the Licensing Agency issuing licenses require that each hospital show evidence that there are one or more physicians on the medical staff of the hospital, and that these physicians are currently licensed by the Texas State Board of Medical Examiners.



The Licensing Agency may require that the application be approved by the local health officer, or other local official, for the compliance with city ordinances of building construction, fire prevention, and sanitation. Hospitals outside city limits shall comply with corresponding state laws.

Each application shall be accompanied by a license fee. In the event the application for a license is denied, such fee shall be refunded to the applicant.

All license fees collected shall be deposited with the State Treasury to the credit of the Licensing Agency and said license fees are hereby appropriated to said agency for its use in the administration and enforcement of this Act.

Each hospital so licensed shall pay a license fee, both initially and annually thereafter, of One Dollar (\$1.00) per bed, provided, however, that a minimum license fee of Twenty-five Dollars (\$25.00) will be required of those hospitals with less than twenty-five (25) beds, and a maximum license fee of Three Hundred Dollars (\$300.00) will be required of those hospitals with more than three hundred (300) beds.

#### Issuance of license; renewals

Sec. 8. Upon receipt of an application for license, and the license fee, the Licensing Agency shall issue a license if it finds that the applicant and the hospital comply with the provisions of this Act, and the rules, regulations, or standards promulgated hereunder. Each such license, unless sooner suspended, cancelled, or revoked, shall be renewable annually upon payment of the prescribed fee.

#### Cancellation, revocation or suspension of license; proceedings; appeals; reissuance of license; injunctions; venue

Sec. 9. The Licensing Agency shall have the authority to deny, cancel, revoke, or suspend a license in any case where it finds there has been a substantial failure to comply with the provisions of this Act or the rules, regulations, or standards promulgated under this Act, or for the aiding, abetting, or permitting the commission of any illegal act, or for conduct detrimental to the public health, morals, welfare and safety of the people of the State of Texas.

Proceedings under this Article shall be initiated by filing charges with the Licensing Agency, in writing and under oath. Said charges may be made by any person or persons. If upon investigation of such charge or charges it is found that such charge or charges appear to have merit, then the chairman of the Licensing Agency shall set a time and place for hearing, and shall cause a copy of the charges, together with a notice of the time and place fixed for hearing, to be served on the respondent or his counsel at least ten (10) days prior thereto. When personal service is impossible, or cannot be effected, the Licensing Agency shall cause to be published once a week for two (2) successive weeks a notice of the hearing in a newspaper published in the county wherein the respondent was last known to be, and shall mail a copy of the charges and of such notice to the respondent at his last known address. When publication of the notice is necessary, the date of hearing shall not be less than ten (10) days after the date of the last publication of the notice. At said hearing the respondent shall have the right to appear, either personally or by counsel, or both, to produce witnesses or evidence in his behalf, to cross-examine witnesses, and to have subpoenas issued by the Licensing Agency. The Licensing Agency shall thereupon determine the charges upon their merits.

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

Any hospital whose license has been cancelled, revoked, or suspended by the Licensing Agency may, within twenty (20) days after the making and entering of such order, take an appeal to any of the District Courts in the county that the hospital is so located in, but the decision of the Licensing Agency shall not be enjoined or stayed except on application to such District Court after notice to the Licensing Agency.

The proceedings on appeal shall be a trial de novo as such term is commonly used and intended in an appeal from the Justice Court to a County Court, and which appeal shall be taken in any District Court of the county where the license has been issued.

Upon application, the Licensing Agency may reissue a license to a hospital whose license has been cancelled, revoked, or suspended when it feels that the reasons bringing about such cancellation, revocation, or suspension have been corrected. Any such applications for reissuance shall be made in such manner and form as the Licensing Agency may require.

The Licensing Agency shall not be bound by strict rules of evidence or procedure in the conduct of its proceedings but the determinations shall be founded on sufficient legal evidence to sustain it.

The Licensing Agency shall have the right to institute an action in its own name to enjoin the violation of any of the provisions of this Act. Said actions for an injunction shall be in addition to any other action, proceeding, or remedy authorized by law.

The venue for any suit seeking to enjoin the violation of any of the provisions of this Act shall lie in the county wherein such violation is alleged to have occurred.

The Licensing Agency shall be represented by the Attorney General and/or the County or District Attorneys of this state.

Before entering any order denying, cancelling, or suspending a license, the Licensing Agency shall hold a hearing in accordance with the procedures set out in this Section.

#### Transferability of license; posting

Sec. 10. Each license shall be issued only for the premises and persons or governmental units named in the application and shall not be transferable or assignable except with the written approval of the Licensing Agency. Licenses shall be posted in a conspicuous place on the licensed premises.

#### Inspection

Sec. 11. Any officer, employee, or agent of the Licensing Agency may enter and inspect any hospital at any reasonable time to assure compliance with, or to prevent a violation of this Act.

#### Stenographers or inspectors; assistants; employment

Sec. 12. The Licensing Agency shall have the power to employ the services of stenographers, inspectors, and other necessary assistants in carrying out the provisions of this Act.

#### Advisory council; membership; terms; vacancies; compensation

Sec. 13. The Governor shall appoint a Hospital Licensing Advisory Council consisting of nine (9) members as herein provided:

(a) Three (3) physicians who are duly licensed by the Texas State Board of Medical Examiners and who are engaged in the active prac-

tice of medicine; one of whom shall be a member of the staff of a hospital of less than fifty (50) beds;

(b) Three (3) hospital administrators actively engaged in the field of hospital administration for a period of not less than two (2) years; one of whom shall be an administrator of a hospital with less than fifty (50) beds and one of whom shall be an administrator of a hospital with not more than one hundred (100) beds;

(c) Three (3) members representing the general public.

All members shall serve for a term of six (6) years except that the original appointment shall be made so that the terms of three members is for two (2) years, the terms of three members is for four (4) years, and the terms of three members is for six (6) years. Members whose terms expire shall hold office until their successors shall be appointed and qualified. In the event of a vacancy occurring before the expiration of a member's term, the appointment shall be for the unexpired term. Members while serving or acting in their official capacities on the official business of the Hospital Licensing Advisory Council shall receive compensation at the rate of Twenty Dollars (\$20.00) per day and shall also be entitled to receive actual and necessary travel and subsistence expenses while so serving away from their place of residence.

#### Duty of advisory council; special meetings

Sec. 14. It shall be the duty of the Hospital Licensing Advisory Council to consult and advise with the Licensing Agency in matters of policy affecting the administration of this Act, in the development of rules, regulations, and standards provided for hereunder, and to review, and make recommendations with respect to rules, regulations, and standards authorized hereunder, prior to their promulgation by the Licensing Agency as specified herein.

Special meetings of the Hospital Licensing Advisory Council may be called at the request of the chairman of the State Board of Health or at the request of any three (3) or more members of the Hospital Licensing Advisory Council.

#### Disclosure of information received by agency

Sec. 15. Information received by the Licensing Agency through reports, inspections, or as otherwise authorized under this law, shall not be disclosed publicly in such manner as to identify individuals or hospitals, except in a proceeding brought under Section 9 of this Act.

#### Violations; penalties

Sec. 16. Any person establishing, conducting, managing, or operating any hospital without a license shall be guilty of a misdemeanor and upon conviction thereof shall be liable to a fine of not more than One Hundred Dollars (\$100.00) for the first offense and not more than Two Hundred Dollars (\$200.00) for each subsequent offense. Each day shall constitute a separate offense.

#### Medical staff memberships

Sec. 17. No provision or provisions of this Act shall in any way change, or modify, the authority or power of the Board of Managers, Board of Trustees, Board of Directors, or Governing Body of any hospital, as that term is defined herein, to make such rules, standards, or qualifications for "Medical Staff" membership, as they in their sole dis-

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cretion may deem necessary or advisable, or to grant or refuse membership on such "Medical Staff." Acts 1959, 56th Leg., p. 505, ch. 223.

Effective 90 days after May 12, 1959, date of adjournment. Section 20 of the Act of 1959 contained a severability clause.

**Art. 4440. Repealed.** Acts 1959, 56th Leg., p. 379, ch. 181, § 28. Eff. 90 days after May 12, 1959, date of adjournment

See, now, art. 4477—11.

Effect of repeal, see note under art. 4477—11.

**Art. 4442. Repealed.** Acts 1959, 56th Leg., p. 505, ch. 223, § 19. Eff. 90 days after May 12, 1959, date of adjournment

Texas hospital licensing law see art. 4437f.

**Art. 4442c. Convalescent and nursing homes and related institutions**

#### Definitions

Sec. 2. As used in this Act:

(a) "Institution" means an establishment which furnishes (in single or multiple facilities) food and shelter to four (4) or more persons unrelated to the proprietor, and, in addition, provides minor treatment under the direction and supervision of a physician licensed by the Texas State Board of Medical Examiners, or services which meet some need beyond the basic provision of food, shelter, and laundry. Nothing in this Act shall apply to hotels or other similar places that furnish only food and lodging, or either, to their guests. And, provided further, that the provisions of this Act shall not apply to any hospital as that term is defined in the Texas Hospital Licensing Law. The provisions of this Act shall not apply to any nursing home conducted by or for the adherents of any well recognized church or religious denomination for the purpose of providing facilities for the care or treatment of the sick who depend exclusively upon prayer or spiritual means for healing, without the use of any drug or material remedy, provided safety, sanitary, and quarantine laws and regulations are complied with, nor shall this Act apply to establishments that furnish only baths and massages in addition to food, shelter and laundry, nor shall this Act apply to institutions operated by persons licensed by the Texas State Board of Chiropractic Examiners. As amended Acts 1959, 56th Leg., p. 505, ch. 223, § 18.

Effective 90 days after May 12, 1959, date of adjournment.

**Art. 4447a. Coordinated health program**

#### Cooperation in establishment of program

Section 1. The Commissioners Court of any one or more counties and the municipal authorities of any one or more cities, towns, school boards and school districts, and any other governmental entity may cooperate in the establishment of a coordinated health program and by mutual agreement may provide for the payment of costs, including the salaries of persons employed, materials used, and the provision of suitable office quarters, health and clinic centers, health services and facilities therefor, and for all maintenance purposes.

**Purpose of act; health districts; definitions**

**Sec. 2.** The purpose of this Act is to promote the effectiveness of local public health programs by providing for the establishment of health districts for administering a coordinated health program for the counties and cities which are members of a district. As used in this Act, "city" means any incorporated city, town or village in this state, and "member" means a county or city which is a party to an agreement for formation of a health district.

**Copies of agreements creating districts; filing; forwarding**

**Sec. 3.** A copy of the agreement creating the health district shall be included in the minutes of the governing body of each member and shall be filed in the office of the county clerk or city secretary or clerk of each member. A copy shall also be forwarded to the State Commissioner of Health.

**Functions of districts**

**Sec. 4.** A health district may perform all the functions pertaining to public health which any of its component members is authorized to perform.

**Director; appointment; qualifications; term; removal; oath; compensation**

**Sec. 5.** A director shall be appointed for each health district, in such manner as is provided in the agreement. If the agreement does not provide for the manner of his selection, the appointment of the director shall be subject to approval by a majority of the governing bodies which are parties to the agreement. The director shall be a physician licensed or eligible to be licensed to practice medicine in the State of Texas and shall possess such other qualifications as may be specified in the agreement. He shall be appointed for a term of four years, and shall be eligible for re-appointment. He need not be a resident of the district at the time of his appointment, but he shall maintain his residence within the district during his tenure of office. He shall be subject to removal from office in the same manner and upon the same conditions as a county health officer.

The director shall take and subscribe to the official oath, and shall file a copy of such oath and copy of his appointment with the State Board of Health; and until such copies are so filed, he shall not be deemed legally qualified. He shall be compensated in accordance with the terms of the agreement under which the district is formed.

**Transfer of authority; discontinuance of office of city or county health officer**

**Sec. 6.** Upon appointment and qualification of a director for the district, the authority vested in the county health officer or the city health officer for one or all members of the district may thereafter be transferred to the director, and the office of county health officer or city health officer may be discontinued by one or all members of the district for the duration of the agreement, provided the County Commissioners Court of each county and the city council of each city involved, who are members of the district consent.

**Appointment and payment of physicians**

**Sec. 7.** The director, with the approval of the governing body of the district, may appoint full-time or part-time physicians or arrange for pay-

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ment of physicians on a fee-for-service basis for rendering medical care for prisoners in city or county jails, rendering medical care to indigents, rendering testimony at lunacy hearings, and for the carrying out of responsibilities concerning medical matters covered by municipal ordinances or court orders in the counties that are members of the district.

#### Funds for medical services

Sec. 8. The district will provide funds for the required medical services as specified in the agreement under which the district operates.

#### Public health physicians

Sec. 9. City and county health officers who are serving at the time a district is organized may be designated as public health physicians, and may continue to render health services which are not in conflict with that of the director of the district.

#### Enforcement of public health laws

Sec. 10. The director of a district shall be responsible to the governing body of the jurisdiction for the enforcement of public health laws and ordinances for the protection of the health of the people, and for the carrying out of such duties in control of diseases as may be prescribed for him in the local agreement.

#### Modification of agreement; dissolution of district; withdrawal of city or county; appointment of health officer

Sec. 11. The agreement under which a district is created may be modified from time to time with the consent of all the governing bodies which are parties thereto, and additional counties or cities may be included in the district with the consent of all the parties. A district may be dissolved by consent of all the governing bodies, and any county or city may withdraw from a district upon request of its governing body with the consent of a majority of the remaining governing bodies or by the governing body giving one years notice to each of the other governing bodies of its intention to withdraw. Upon dissolution or withdrawal, the funds and property of the district shall be distributed or adjusted in such manner as the agreement provides, or in the absence of a provision in the agreement, in such manner as a majority of the governing bodies agree upon. When any county or city ceases to be a member of a district, a health officer for the county or city shall be appointed immediately and he shall resume the performance of the duties vested in that officer. Acts 1959, 56th Leg., p. 536, ch. 239.

Emergency. Effective May 26, 1959.

#### Art. 4447b. Affidavits of doctor in lieu of vaccination of applicants for admission to schools

No form of vaccination or inoculation shall be required for admission of a person to any public school or state-supported institution of higher learning when such person applying for admission submits, to the admitting official, an affidavit signed by a doctor who is duly registered and licensed under the Medical Practice Act of Texas, stating that, in said doctor's opinion, the vaccination or inoculation required would be injuri-

ous to the health and well-being of the applicant. Acts 1959, 56th Leg., p. 630, ch. 284, § 1.

Effective 90 days after May 12, 1959, date of adjournment.

Duties of city health officer, see art. 4430.

Employment of health supervisors in county unit system of education, see art. 2728.

General powers and duties of State Board of Health, see art. 4419.

Health bulletins of county hospitals, see art. 4483.

Reopening of schools after disinfection, see art. 4477, rule 28.

Tax levies for buying vaccines, see arts. 4436a—2, 4436a—3.

**Title of Act:**

An Act providing for an affidavit signed by a doctor registered and licensed under the Medical Practice Act of Texas, in lieu of requiring vaccination or inoculation for admission to public schools and state-supported institutions of higher learning; and declaring an emergency. Acts 1959, 56th Leg., p. 630, ch. 284.

**Art. 4447c. Texas Coordinating Commission for State Health and Welfare Services**

**Creation; membership; terms**

Section 1. There is hereby created a "Texas Coordinating Commission for State Health and Welfare Services," to be composed of the following persons:

(a) The Commissioner of Health, the Commissioner of Education, the Executive Director of the Board for Texas State Hospitals and Special Schools, the Chairman of the Texas Employment Commission, the Commissioner of Public Welfare, the Executive Secretary-Director of the State Commission for the Blind, and the Executive Director of the Texas Youth Council;

(b) Three members of the Senate appointed by the Lieutenant Governor;

(c) Three members of the House of Representatives appointed by the Speaker of the House;

(d) Three citizen members appointed by the Governor and chosen for their recognized interest in welfare activities of the state, local governments, and private agencies.

The terms of members of the Commission first appointed shall be from the date of their appointment to December 31, 1960, and appointments thereafter shall be for two-year periods ending on December 31 of even-numbered years.

**Organization; chairman**

Sec. 2. The Texas Coordinating Commission for State Health and Welfare Services shall meet within thirty (30) days after the appointment of all its members and organize by selecting a chairman and vice-chairman. The chairman shall be a member of the Legislature, and after the initial selection, the chairmanship shall alternate biennially between House and Senate members.

**Secretariat; records**

Sec. 3. The staff of the Texas Legislative Council shall serve as secretariat to the Texas Coordinating Commission for State Health and Welfare Services, keeping the records of the Commission and performing such other duties as may be requested by the Commission.

**Meetings**

Sec. 4. Regular meetings of the Texas Coordinating Commission for State Health and Welfare Services shall be held in Austin or at other

locations within the state as determined by the Commission, and after its initial organization the Commission shall meet at least once every three months. Called meetings of the Commission may be held at such times and at such places as it may determine. A majority of the members shall constitute a quorum.

#### Compensation; expenses

Sec. 5. Members of the Commission shall serve without compensation, but members of the Commission who are members of the Legislature shall be reimbursed for their actual and necessary expenses while in attendance upon meetings of the Commission from Texas Legislative Council funds.

#### Duties

Sec. 6. It shall be the duty of the Texas Coordinating Commission for State Health and Welfare Services:

(1) To make a continuing study and analysis of the state's health and welfare services generally and specifically, both as to cost and adequacy;

(2) To study diagnostic services, care, training, educational and rehabilitation programs for the handicapped;

(3) To recommend long-range programs to be carried out by the several state departments, institutions, and agencies having health and welfare functions;

(4) To inspect and make recommendations specifically concerning state institutions and facilities for the mentally and physically handicapped;

(5) To recommend the elimination of duplication of services between agencies or recommend the institution of additional services;

(6) To study and determine the need for changes in the laws as they apply to the care, education, training and rehabilitation of the handicapped;

(7) To determine the need for changes in administrative procedure and to recommend such changes to the agencies and departments concerned;

(8) To examine from year to year, the adequacy, coverage, and administration of old age assistance and assistance programs for the blind, the permanently and totally disabled, and dependent children; and

(9) To make recommendations to the Legislature concerning the matters covered in items (1) through (8) for its consideration.

#### Cooperation of departments, agencies and institutions

Sec. 7. All state departments, agencies, and institutions functioning in the fields of health and welfare in any way, shall cooperate with and assist the Texas Coordinating Commission for State Health and Welfare Services in the performance of its duties and shall make available all books, records, and information requested except that which is declared by law to be confidential in nature.

#### Reports

Sec. 8. The Commission shall compile biennial reports on its activities for submission to the Governor and the Legislature. The reports shall be submitted not later than December 1 of each year preceding the year in which the Legislature convenes in Regular Session and shall include



any recommendations which the Commission may have for legislative action. Acts 1959, 56th Leg., p. 773, ch. 352.

Emergency. Effective June 1, 1959.

Title of Act: Services; defining its membership, powers, and duties; and declaring an emergency.  
An Act creating a Texas Coordinating Commission for State Health and Welfare Acts 1959, 56th Leg., p. 773, ch. 352.

### CHAPTER THREE—FOOD AND DRUGS

Art.  
4476—4. Corn meal and corn grits; enrichment [New].

Art. 4476—4. Corn meal and corn grits; enrichment

#### Definitions

Section 1. In this Act, unless the context otherwise requires:

(a) "corn meal" means all types of corn meal intended for human consumption including corn meal mixes and self-rising corn meal;

(b) "corn grits" means all types of corn grits intended for human consumption;

(c) "person" means an individual, corporation, partnership, association, joint stock company, trust, or any other unincorporated organization;

(d) "appropriate Federal agency" means the Federal Security Agency, or any other Federal agency, charged with the enforcement and administration of the Federal Food, Drug, and Cosmetic Act;

(e) "commissioner" means the Commissioner of Health of the State of Texas.

#### Required vitamin and mineral content

Sec. 2. On and after the effective date of this Act, it shall be unlawful for any person, except as hereinafter provided, to sell, or offer for sale, or exchange for any services or goods, in this state, any corn meal or corn grits unless each pound of corn meal and each pound of corn grits contains:

(a) not less than 2.0 milligrams and not more than 3.0 milligrams of Vitamin B-1 (thiamine);

(b) not less than 1.2 milligrams and not more than 1.8 milligrams of riboflavin;

(c) not less than 16 milligrams and not more than 24 milligrams of niacin or niacin amide;

(d) not less than 13 milligrams and not more than 26 milligrams of iron;

#### Optional ingredients

Sec. 3. Each pound of corn meal and each pound of corn grits may contain both or either of the following optional ingredients:

(a) not less than 250 U.S.P. units and not more than 1,000 U.S.P. units of Vitamin D;

(b) not less than 500 milligrams and not more than 750 milligrams of calcium;

#### Sale of unlabeled corn meal or corn grits

Sec. 4. On and after the effective date of this Act, it shall be unlawful for any person except as hereinafter provided, to sell, or offer for

sale, or exchange for any services or goods, in this state, any corn meal or corn grits which is not labeled in accordance with such requirements as may be prescribed by the Commissioner as provided in Section 6 of this Act.

#### Enforcement of act

Sec. 5. This Act shall be enforced by the Commissioner who is authorized to make rules and regulations for carrying out the provisions thereof. The authority vested in the Commissioner by this Act may be exercised by him through such officers or employees of the State Health Department as he may designate. The Commissioner or such employees or officers as he may designate are hereby authorized to enter upon any business premises or vehicles where corn meal or corn grits may be found, for the purpose of enforcing this Act, and to take samples of, and inspect and analyze, corn meal and corn grits, which are offered for sale, or which have been sold or exchanged for services or goods.

#### Uniformity of requirements

Sec. 6. In order to avoid confusion and to avoid increased costs to the people of this state due to the necessity of complying with diverse requirements relating to the manufacture and distribution of corn meal and corn grits, it is desirable that there should be uniformity between the requirements of this state and the Federal Government relating to such products:

- (a) the vitamins and minerals and the amounts thereof required or permitted to be contained therein;
- (b) the manner of enrichment with vitamins and minerals;
- (c) methods of testing to determine conformance with the provisions of law;
- (d) labeling requirements.

#### Application of act

Sec. 7. (a) This Act shall not apply to the delivery of corn meal or corn grits by a miller to a corn producer who has had same ground by the miller from the producer's corn for use in the producer's own home when the miller is paid in corn or in money for such milling services; however, if said producer desires the health benefits for his family and requests enrichment, then the miller is required by this Act to enrich according to the hereinbefore mentioned standards.

(b) This Act shall not apply to the sale of corn meal or corn grits if the purchaser furnishes to the seller a certificate, in such form as the Commissioner, by regulation, shall prescribe, certifying that he will use said corn meal or corn grits solely in the production of corn meal or corn grits enriched as required by this Act, or other legitimate products not covered by this Act.

(c) This Act shall not apply to the sale of whole grain corn meal or whole grain corn grits.

(d) This Act shall not apply to the sale or use for human consumption of corn meal or corn flour commonly known as "masa" which is used in the preparation of Mexican food such as tortillas and tamales.

#### Penalties

Sec. 8. Any person found wilfully or culpably guilty of violating any provision of Section 2, 4, 6 or 9 of this Act, or any rule or regulation made by authority thereof shall be subject for each and every offense to

imprisonment not exceeding thirty (30) days, or a fine of not more than One Hundred Dollars (\$100.00) or both such fine and imprisonment.

**Seizure and detention of products; disposal; release**

Sec. 9. Whenever the Commissioner has probable cause to believe that any corn meal or corn grits has been sold, or offered for sale, or exchange, in violation of any of the provisions of this Act, he may seize and affix to such product a notice to that effect, detaining the product and warning all persons not to dispose of it by sale or otherwise without his permission. It shall be a violation of this Act, subject to the penalties set forth in Section 8, for any person to dispose of such product by sale or otherwise without such permission. The Commissioner may, in his discretion, release the corn meal or corn grits for feed purposes, or for shipment out of the State of Texas, for human consumption if brought into compliance with this Act and upon payment of all costs or expenses incurred in any proceeding connected with such seizure and withdrawal.

**Disposal of nonconforming corn meal and corn grits**

Sec. 10. All processors, distributors, millers, wholesalers, and retailers shall be allowed sixty (60) days after the effective date of this Act to dispose of any corn meal or corn grits on hand not conforming to the provisions of this Act. Acts 1959, 56th Leg., p. 775, ch. 353.

Effective 90 days after May 12, 1959. Section 11 of the Act of 1959 contained a date of adjournment. severability clause.

**CHAPTER THREE A—BEDDING**

**Art. 4476a. Bedding—Manufacture, repair or renovating  
Labeling of Bedding Required**

Sec. 2. (a) No person shall manufacture, repair, renovate or sell, or have in his possession with intent to sell, any article of bedding, unless there is securely attached, where clearly visible, a white tag, made of substantial cloth or a material of equal quality, as provided in this Act. All tags required by this Section shall be attached at the factory.

(b) Bedding manufactured in whole from all new material shall have attached a tag not less than six (6) square inches in size upon which shall be plainly stamped or printed, in black ink, in the English language, the statement "All New Material" in lettering not less than one-eighth ( $\frac{1}{8}$ ) inch in height; the kind and grade of each material used in the filling, expressed in percentages by weight when more than one kind or grade of material is used; and the manufacturer's permit number, assigned by the Department.

(c) Bedding manufactured in whole, or in part, from second hand material shall have securely attached a tag not less than twelve (12) square inches in size upon which shall be plainly printed in red ink, in the English language, the statement "Second Hand Material" in lettering not less than one-fourth ( $\frac{1}{4}$ ) inch in height and the manufacturer's permit number assigned by the Department. The provisions of this paragraph (c) of Section 2 are not intended to apply to bedding reworked, repaired or renovated for the owner for his own use.

(d) Bedding renovated, reworked or repaired for the owner, for the owner's use, from the owner's material, which is in whole or in part second hand, shall have attached a tag not less than six (6) square inches

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in size, upon which shall be plainly printed in black ink, in the English language, the statement "Not for Sale, Owner's Own Material which is Second Hand Material" in lettering not less than one-eighth ( $\frac{1}{8}$ ) inch in height; the name and address of the owner; and the manufacturer's permit number assigned by the Department.

(e) The terms used on the tag to describe kinds and grades of materials used in filling shall be restricted to those defined in the regulation of the Department, and no trade or substitute terms shall be used.

(f) It shall be unlawful to make any false or misleading statements on the tag required by this Section. It shall be unlawful for any person to remove, deface, alter or cause to be removed, defaced or altered, any tag or statement contained thereon for the purpose of defeating any of the provisions of this Act. The placing of registration stamps required in Section 7 of this Act over any lettering on the tag shall be construed to be defacement of the tag. As amended Acts 1955, 54th Leg., p. 578, ch. 192, § 1; Acts 1959, 56th Leg., p. 126, ch. 74, § 1.

Effective 90 days after May 12, 1959, date of adjournment.

Section 3 of the amendatory Act of 1959 repealed all conflicting laws and parts of laws to the extent of conflict only. Section 4 contained a severability clause.

Former subdivision (e) of section 2, requiring tags to be securely sewn to mattresses, was repealed by Acts 1957, 55th Leg., p. 207, Ch. 95, § 1, and former subdivisions (f) and (g) were renumbered (e) and (f) respectively.

#### Enforcement of Act

Sec. 5. (a) The Department is hereby charged with the enforcement of this Act, for the protection of the public health and the public welfare. It is further empowered, and its duty shall be to make, amend, alter or repeal general rules and regulations of procedure for carrying into effect all the provisions of this Act, and to prescribe means, methods, and practices to make effective such provisions.

(b) No person shall interfere, obstruct, or hinder an authorized representative of the Department in the performance of his duty as set forth in the provisions of this Act.

(c) The Department, through its authorized representative, shall have the authority to enter any place or establishment where bedding is manufactured, repaired, renovated, stored, sold, offered for sale, or where materials are prepared for use in bedding, or where germicidal treatment of bedding is performed, for the purpose of ascertaining whether the requirements of this Act and the regulations of the Department have been met.

(d) The Department, through its authorized representative, is empowered to take samples of materials for inspection and analysis, and to hold for evidence, at a trial, for the violation of this Act any article of bedding or materials manufactured, repaired, renovated, sold or offered for sale, in violation of this Act.

(e) The Department, through its authorized representative, shall have authority to place "Off-Sale" any article of bedding or material which is offered for sale, or which could be offered for sale, in violation of this Act. When articles of bedding or materials are removed from sale, they shall be so tagged; and such tags shall not be removed except by an authorized representative of the Department, or as the Department may direct, after satisfactory proof of compliance with all requirements of this Act and of the regulations of the Department and after a "Release for Sale" has been issued by the Department through its authorized representative.

(f) The violation of a general rule or regulation of procedure promulgated under this Act shall be deemed to be a violation of this Act.

(g) If any party at interest be dissatisfied with any act, order, ruling or decision of the State Department of Health in connection with the administration of this Act, such party may file an action, naming the State Department of Health as defendant, in any of the District Courts of Travis County to set aside the particular act, order, ruling or decision. The cause shall be tried by the court without a jury in the same manner as civil actions generally and all fact issues material to the validity of such act, order, ruling or decision shall be re-determined in such trial on the preponderance of the competent evidence but no evidence shall be admissible which was not either tendered to the State Department of Health or in its files while the matter was pending before the Department for decision. The burden of proof shall be on the plaintiff and judgment shall be entered by the court declaring the action, order, ruling or decision in question either valid or invalid. Appeals from any final judgment may be taken in the manner provided for in ordinary civil actions generally. No appeal bond shall be required by the State Department of Health. All acts, orders, rulings and decisions of the State Department of Health shall be final unless an action to set aside as herein authorized is filed within thirty days after the action, order, ruling or decision is taken or made by the State Department of Health. As amended Acts 1959, 56th Leg., p. 126, ch. 74, § 2.

Effective 90 days after May 12, 1959,  
date of adjournment.

## CHAPTER FOUR—SANITARY CODE

### Article 4477. Sanitary Code

**Rule 3. "Contagious diseases."**—The term "contagious disease" as used in these regulations shall be held to include the following diseases, whether contagious or infectious; and as such shall be reported to all local health authorities and by said authority reported in turn to the Chairman of the State Board of Health: Asiatic cholera, bubonic plague, typhus fever, yellow fever, leprosy, smallpox, scarlet fever (scarlatina), diphtheria (membranous croup), epidemic cerebrospinal meningitis, dengue typhoid fever, epidemic dysentery, trachoma, and anthrax. As amended Acts 1959, 56th Leg., p. 379, ch. 181, § 22.

**Rule 4. Health officers to keep record.** City and county health authorities shall keep a careful and accurate record of all cases of contagious diseases as reported to them, with the date, name, age, sex, race, location, and such other necessary data as may be prescribed by the State Board of Health. They shall also make a monthly report of all contagious diseases of which they may be cognizant, to the Chairman of the State Board of Health, before the fifth of the following month, upon blank forms provided by the State Board of Health. As amended Acts 1959, 56th Leg., p. 379, ch. 181, § 23.

**Rule 14. Non-quarantinable contagious disease.** The management and control of typhoid fever, cerebro-spinal meningitis (epidemic), epidemic dysentery, trachoma (acute catarrhal conjunctivitis), and anthrax require special isolation and partial disinfection. As amended Acts 1959, 56th Leg., p. 379, ch. 181, § 24.

**Rule 20. Premises to be disinfected before re-occupied.** No person shall offer for hire or cause or permit any one to occupy apartments, previously occupied by a person ill with smallpox, scarlet fever, diphtheria, or

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

any quarantinable disease, until such apartments shall have been disinfected under the supervision of the local health authority. As amended Acts 1959, 56th Leg., p. 379, ch. 181, § 25.

**Rule 23. Householders to report contagious diseases.** Every hotel proprietor, keeper of a boarding house or inn, and householder or head of a family in a house wherein any case of reportable contagious disease may occur, shall report the same to the local health authority within twelve (12) hours of the time of his or her first knowledge of the nature of such disease, unless previous notice has been given by the physician in attendance; and in cases of quarantinable diseases until instructions are received from the said local health authority shall not permit any clothing or other article which may have been exposed to infection to be removed from the house; nor shall any occupant of said house change his residence elsewhere without the consent of the said local authority. As amended Acts 1959, 56th Leg., p. 379, ch. 181, § 26.

**Rule 25. To send physician printed matter.** Immediately after being notified of any case of smallpox, scarlet fever, diphtheria, or typhoid fever, the local health authority shall send to the attending physician, or with his approval directly to the patient the printed matter published by the State Board of Health relative to the prevention and control of such diseases. As amended Acts 1959, 56th Leg., p. 379, ch. 181, § 27.

**Rule 47b. Transfer of item relating to legitimacy status of person on certificate of birth.**—The item as to the legitimacy status of a person shall be included in the section entitled "For Medical and Health Use Only" of the standard certificate of birth. The section entitled "For Medical and Health Use Only" shall not be considered a part of the legal certificate of birth. Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 14A added Acts 1959, 56th Leg., p. 640, ch. 293, § 1.

Section 2 of Acts 1959, 56th Leg., p. 640, Ch. 293 provided: "So as to provide the time required for the printing and distribution of revised certificates of birth to all local registration officials, county clerks,

physicians, and midwives, and to collect all currently used certificate forms, this Act shall take effect and be in force on the first day of January 1960."

Emergency. Effective Jan. 1, 1960.

**Rule 51a. Blanks and registration forms; index of births and deaths; records; transcripts; fees; delayed registrations; judicial procedure to establish facts of birth.**—A. The State Department of Health shall prepare, print, and supply to local registrars all blanks and forms used in registering, recording, and preserving the returns, or in otherwise carrying out the purposes of this Act, and each city and incorporated town shall supply its local registrar, and each county shall supply the county clerk with permanent record books, in forms approved by the State Registrar, for the recording of all births, deaths, and stillbirths occurring within their respective jurisdictions. The State Registrar shall prepare and issue such detailed instructions as may be required to procure the uniform observance of its provisions and the maintenance of a perfect system of registration; and no other forms shall be used than those approved by the State Department of Health. He shall carefully examine the certificates received monthly from the local registrars, and if any such are incomplete or unsatisfactory he shall require such further information to be supplied as may be necessary to make the record complete and satisfactory. All physicians, midwives, informants or funeral directors, and all other persons having knowledge of the facts, are hereby required to supply, upon a form provided by the State Department of Health, or upon the original certificate, such information as they may possess regarding any birth, death, or stillbirth upon demand of the State Registrar, in person, by mail, or through the local registrar. After its acceptance for registra-

tion by the local registrar, no record of any birth, death, or stillbirth shall be altered or changed; provided, however, that if any such record is incomplete, or satisfactory evidence can be submitted proving the record to be in error in any respect, an amending certificate may be filed for the purpose of completing or correcting such record, which amendment shall be in a form prescribed by the State Department of Health and shall, if accepted for filing, be attached to and become a part of the legal record of such birth, death, or stillbirth. The State Registrar shall further arrange, bind, and permanently preserve the certificates in a systematic manner, and shall prepare and maintain a comprehensive index of all births and deaths registered; said index to be arranged alphabetically, in the case of deaths, by the names of decedents, and in the case of births, by the names of fathers and mothers. If any organization or individual is in possession of any record of births or deaths which may be of value in establishing the genealogy of any resident of this state, such organization or individual may file such record or a duly authenticated transcript thereof with the State Registrar. If any person desires a transcript of any such record, the State Registrar shall furnish the same upon application, together with a certificate that it is a true copy of such record, as filed in his office, and for his services in so furnishing such transcript and certificate he shall be entitled to a fee of Ten Cents (10¢) per folio, Fifty Cents (50¢) per hour or fraction of an hour necessarily consumed in making such transcript, and to a fee of Twenty-five Cents (25¢) for the certificate, which fees shall be paid by the applicant; provided, that before the issuance of any such transcript, the State Registrar shall be satisfied that the applicant is properly entitled thereto, and that it is to be used only for legitimate purposes.

B. Delayed Registration of Births.

Subject to the regulations and requirements of the State Department of Health:

1. An application to file a delayed certificate of the birth of a person born in this state, and not previously registered as provided by law, shall be made to the State Registrar of Vital Statistics.

2. When the birth occurred more than five days but less than one year prior to the application for registration, the birth may be registered on a certificate of live birth and be submitted for filing to the local registrar of the district in which the birth occurred. The local registrar may accept the certificate for filing when such evidence is submitted to substantiate the facts of birth as may be required by the local registrar. A statement may be required to explain the delay in filing the certificate.

3. When the birth occurred one year but less than four years prior to the application for registration, the birth shall be registered on a form prescribed by the State Registrar of Vital Statistics and shall be submitted to him for filing. The State Registrar may accept the certificate for filing when such evidence is submitted to substantiate the facts of birth as may be required by the State Registrar. A statement may be required to explain the delay in filing the certificate. Each certificate thus filed shall be marked "Delayed."

4. When the birth occurred four or more years prior to the application for registration, the certificate of birth shall be prepared on a form entitled "Delayed Certificate of Birth," which form shall be prescribed and furnished by the State Department of Health. The information provided on such registration form shall be subscribed and sworn to by the person whose birth is to be registered before an official authorized to administer oaths. When such person is not competent to swear to this information, it

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

shall be subscribed and sworn to by a parent, legal guardian, or the representative of such person.

a. The form shall provide for the name and sex of the person whose birth is to be registered, and place and date of birth, the names of the parents, and their birthplaces; and such other information as may be required by the State Registrar.

b. When the certificate is submitted, the State Registrar shall add a description of each document submitted in support of the delayed registration including the title or kind of document; the name and address of the affiant if the document is an affidavit of personal knowledge, or of the custodian, if the document is a record of a business entry or a certified copy thereof; the date of the original entry and the date of the certified copy; and

c. The certification of the State Registrar shall be added to those certificates accepted for filing. The State Registrar shall issue certified copies of such certificates in accordance with the provisions of Section 21 of this Act.<sup>1</sup>

5. The State Registrar shall accept the registration if the applicant was born in this state and if the applicant's statement of date and place of birth and parentage is established to the satisfaction of the State Registrar by the following evidence:

a. If the birth occurred four years but less than fifteen years prior to the date of filing:

(1) The statement of date and place of birth shall be supported by at least two documents, only one of which may be an affidavit of personal knowledge.

(2) The statement of parentage shall be supported by at least one document, which may be one of the above documents.

b. If the birth occurred fifteen or more years before the date of filing:

(1) The statement of date and place of birth shall be supported by at least three documents, only one of which may be an affidavit of personal knowledge.

(2) The statement of parentage shall be supported by at least one document, which may be one of the above documents.

(3) Any document accepted as evidence, other than an affidavit of personal knowledge, shall be at least five years old. A copy or abstract of such document may be accepted if certified as true and correct by the custodian of the document.

6. When an applicant does not submit the documentary evidence as specified above, or when the State Registrar finds reason to question the validity or adequacy of the certificate or the documentary evidence, the State Registrar shall not register the delayed certificate, but shall furnish the applicant with a statement of the reasons for such action, and shall advise the applicant of his right to appeal to the county court for probate matters of the county of birth as provided in Subsection C of this Section.

7. A certificate of birth registered one year or more after the date of birth shall show on its face the date of the registration and shall be marked "Delayed."

8. If an application for a delayed registration of birth is not actively prosecuted, the State Registrar shall return the application, supporting evidence, and any related instruments to the applicant or make such other disposition thereof as the State Registrar may deem appropriate.

9. For each application for a delayed certificate of birth, the State Registrar shall be entitled to a fee of Three Dollars (\$3.00), said fee to be paid by the applicant. All such fees received by the State Registrar under

<sup>1</sup> Rules 34a-55a; Vernon's Ann.P.C. art. 781a.



the provisions of this Section shall be deposited and used as provided in Section 21 of this Act.

C. Judicial Procedure to Establish Facts of Birth.

1. If a delayed certificate of birth is not accepted by the State Registrar under the provisions of Subsection B of this Section, a petition may be filed with the county court for probate matters of the county in which the birth occurred for an order establishing a record of the date of birth, place of birth, and parentage of the person whose birth is to be registered.

2. Such petition shall be made on a form prescribed and furnished by the State Department of Health.

3. The petition shall be accompanied by a statement of the State Registrar issued in accordance with Subsection B (6) of this Section and all documentary evidence which was submitted to the State Registrar in support of such registration.

4. If the court, from the evidence presented, finds that the person for whom a delayed certificate of birth is sought was born in this State, it shall make findings as to the date and place of birth and parentage and such other findings as the case may require and shall issue an order on a form prescribed and furnished by the State Department of Health to establish a record of birth. This order shall include the birth data to be registered, a description of the evidence presented, and the date of the court's action.

5. The fees of the court shall be the same as those set out in Articles 3925 and 3930, Vernon's Texas Civil Statutes.

6. The clerks of the courts shall forward each such order to the State Registrar within seven days after it was entered. Such order shall be registered by the State Registrar and shall constitute the record of birth, from which copies may be issued in accordance with the provisions of Section 21 of this Act.

D. Delayed Registration of Deaths.

Any person wishing to file the record of any death occurring in Texas and not previously registered may submit to the county court for probate matters of the county in which the death occurred a record of that death, written on the adopted form of death certificate. The certificate shall be substantiated by the affidavit of the physician last in attendance upon the deceased, or the funeral director who buried the body. When the affidavit of the physician or funeral director cannot be secured, the certificate shall be supported by: (a) the affidavit of some person who was acquainted with the facts surrounding the death, at the time the death occurred; and (b) the affidavit of some person who was acquainted with the facts surrounding the death, and who is not related to the deceased by blood or marriage. Provided that when application is made as provided in this paragraph, a fee of One Dollar (\$1.00) shall be collected by the court, Fifty Cents (50¢) of which shall be retained by the court, and Fifty Cents (50¢) of which shall be retained by the clerk of the court for recording said death certificate. Within seven (7) days after the certificate has been accepted and ordered filed by the court, the clerk of that court shall forward the certificate to the State Bureau of Vital Statistics with an order from the court to the State Registrar that the certificate be accepted. The State Registrar is authorized to accept the certificate when verified in the above manner, and shall issue certified copies of such records as provided for in Section 21 of this Act. Such certified copies shall be prima facie evidence in all courts and places of the facts stated thereon. The State Bureau of Vital Statistics shall furnish the forms upon which such records are filed, and no other form shall be used for that purpose. As

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

amended Acts 1951, 52nd Leg., p. 355, ch. 223, § 2; Acts 1957, 55th Leg., p. 256, ch. 120, § 1; Acts 1959, 56th Leg., p. 787, ch. 359, § 1.

Emergency. Effective Jan. 1, 1960.

Section 2 of the amendatory Act of 1959 provided that the Act should take effect Jan. 1, 1960.

Arts. 4477—3 to 4477—10. Reserved for future legislation

## CHAPTER FOUR B—TEXAS TUBERCULOSIS CODE [NEW]

Art.

4477—11. Texas Tuberculosis Code.

Art. 4477—11. Texas Tuberculosis Code

### Short Title

Section 1. This Act shall be known and cited as the Texas Tuberculosis Code.

### Purpose

Sec. 2. It is the purpose of this Code to provide care and treatment for those afflicted with tuberculosis, to facilitate their hospitalization, and to enable them to obtain needed care.

### Definitions

Sec. 3. As used in this Code, unless the context otherwise requires:

(a) "Board" means the Board for Texas State Hospitals and Special Schools;

(b) "Person" includes firm, partnership, joint stock company, joint venture, association, and corporation;

(c) "Political subdivision" includes a county, city, town, village, or hospital district in this State but does not include the Board or any other department, board, or agency of the State having state-wide authority and responsibility;

(d) "Physician" means a person licensed by the Texas State Board of Medical Examiners to practice medicine in the State of Texas;

(e) "Head of hospital" means the individual in charge of a hospital;

(f) "State Tuberculosis Hospital" means a tuberculosis hospital operated by the Board and presently consisting of McKnight State Tuberculosis Hospital, Sanatorium, Texas; San Antonio State Tuberculosis Hospital, San Antonio, Texas; Legion Branch of San Antonio Tuberculosis Hospital, Kerrville, Texas; East Texas Tuberculosis Hospital, Tyler, Texas, and Harlingen State Tuberculosis Hospital, Harlingen, Texas;

(g) "Tuberculosis patient" means any person, adult or child, who has any form of active tuberculosis in any part of the body;

(h) "Person legally responsible" means parents, guardians, spouses, or any person whom the laws of this State hold responsible for the debts incurred as a result of hospitalization and/or treatment;

(i) "Local health authority" means the city or county health officer, provided that such health officer is a licensed and practicing physician, within their respective jurisdictions;

(j) "Resident of this State" means a person who has lived continuously in this State for a period of one year or more and who has not acquired a residence in another state by living continuously therein for at least

one year subsequent to his residence in this State. Time spent in a public institution or on furlough therefrom is not included in determining residence in this or another State;

(k) "Department" means the Texas State Department of Health.

#### **Control and Sanitary Management of Tuberculosis**

Sec. 4. Tuberculosis in a contagious, infectious, or communicable state is hereby declared to be dangerous to public health.

(a) Any physician, or other person, who makes a diagnosis in, or treats a case of tuberculosis, and every head or manager of a hospital, dispensary, or charitable, or penal institution in which there is a case of tuberculosis, shall report such case as soon as possible, in writing, or by an acknowledged telephone communication to the local health authority, stating the name, address, age, sex, color, and occupation of the diseased person and the date of the onset of the disease, and the probable source of infection.

(b) All local health authorities shall keep a careful and accurate record of all cases of tuberculosis as reported to them with the date, name, age, sex, race, location, and such other necessary data as may be prescribed by the Texas State Department of Health. Such health authorities shall make a monthly report of all tuberculosis cases of which they may be cognizant to the Department before the fifth of the following month upon blank forms provided by the Department. These reports may be used by the Department for any and all purposes consistent with the care and treatment of individuals afflicted with tuberculosis, for research purposes, for statistical purposes, for investigative purposes, with the ultimate goal being the eradication of tuberculosis in Texas.

(c) It shall be the duty of every physician and of every other person who examines or treats a person having tuberculosis to instruct him in measures for preventing the spread of such disease and of the necessity for treatment until cured. The attending physician is authorized to and he shall place the patient under restrictions of the character described hereafter.

(d) The management and control of tuberculosis shall require "special isolation" and "partial disinfection."

"Special isolation" includes, first, prohibition of patient from attending any place of public assemblage; second, the providing of separate eating utensils for the patient; third, prohibition of sleeping with others, or using the same towels or napkins.

"Partial disinfection" means disinfection of discharges or excretions of patients and their clothing and the room or rooms occupied by the patient during illness.

Disinfection and isolation shall be considered a part of the control of tuberculosis and shall be done according to the directions set forth by the Department. Such regulations of isolation and disinfection are to be observed by all local health authorities, boards of health, health officers, physicians, school superintendents and trustees, and others. All local health authorities are hereby directed and authorized to maintain isolation and practice disinfection of all such tuberculosis patients, vehicles, or premises which are infected or are suspected of being infected with tuberculosis whenever found.

**Measures for protection of persons not infected by tuberculosis**

Sec. 5. Upon receipt of a report of a case of tuberculosis, the local health authority shall institute measures for protection of other persons from infection by such diseased person.

(a) All duly authorized health authorities of this State are authorized to notify any person who is known to be infected with tuberculosis, to place himself under the medical care of a physician licensed by the Texas State Board of Medical Examiners, hospital, or clinic, for treatment or examination until such physician, hospital, or clinic shall furnish such health authority with a certificate that such person examined or treated is free from tuberculosis in an infectious or contagious state. The certificate shall state that the person examined has been given an actual and thorough examination. The test or tests for tuberculosis shall be that type of test or tests as approved by the Department. Such certificates shall also contain the report of the test.

(b) Physicians, local health authorities, and all other persons are prohibited from issuing certificates of freedom from tuberculosis unless the examination and tests provided for are complied with and the person so examined is found free from tuberculosis in an infectious or contagious state. Before a certificate of freedom from tuberculosis can be issued in the case of a person who has previously been infected with tuberculosis, it will be necessary that the physician or person on giving the certificate shall submit to the local health authority a report of the person showing that a test or tests as are prescribed by the Department to prove freedom from tuberculosis have been given by such physician or made by a laboratory approved by the Department and that the results show that the person is no longer infected with tuberculosis in an infectious or contagious state.

(c) Any person who violates the provisions of Section 4(d), or who fails to follow the directions of the local health authority, or who fails to follow the directions of his attending physician pursuant to Section 4 (c), or who in the opinion of the local health authority cannot be treated with reasonable safety to the public, at home, may be quarantined, as that term is hereinafter defined, and the local health authority may direct, pursuant to rules and regulations promulgated by the Department, the removal of the person to a suitable place for examination, and if such person is found to be infected with tuberculosis in an infectious and contagious state, then such person may be quarantined, as that term is hereinafter defined, until such person is no longer in an infectious and contagious state.

Quarantine, as used in this Section, means the limitation of movement and separation, during that period of time while infectious and contagious, from other persons not so infected, in such places and under such conditions as will prevent the direct or indirect conveyance of such infectious or contagious condition to others not so infected.

A person found to be infected with tuberculosis in an infectious and contagious state and quarantined under the provisions of this Section may be placed in any place suitable for the detention and segregation required under the provisions of this Section. If suitable facilities are not available within the jurisdiction of the local health authority, then in such event, the person so quarantined may be transported to a State tuberculosis hospital designated by the Board. The Board is hereby empowered and directed to provide suitable facilities for detention of such individuals.

The Commissioners Courts of the various counties and the governing body of all incorporated towns and cities are hereby empowered to pro-

vide suitable places for the detention of persons who may be subject to quarantine and who should be segregated for the execution of the provisions of this Section; and such commissioners courts and governing body of incorporated cities and towns are hereby authorized to incur on behalf of their said counties, cities, or towns, the expenses necessary to the enforcement of this Section.

The Commissioners Courts of the various counties and the governing body of all incorporated towns and cities are hereby empowered and directed to provide transportation to the State tuberculosis hospital so designated by the Board for any person quarantined under the provisions of this Section when suitable facilities are not available within the jurisdiction of the local health authority.

The local health authority shall inform all persons who are to be released from quarantine for tuberculosis, in case they are not cured, what further treatment should be taken to complete their cure.

(d) It shall be the duty of all persons infected with tuberculosis, or who, from exposure to tuberculosis, may be liable to endanger others who may come in contact with them, to strictly observe such instructions as may be given them by any local health authority of the State in order to prevent the spread of tuberculosis.

(e) If an attending physician or other person knows or has good reason to suspect that a person having tuberculosis is so conducting himself or herself so as to expose other persons to infection or is about so to conduct himself or herself, he shall notify the local health authority of the name and address of the diseased person and the essential facts in the case, and the local health authority shall investigate the facts of the case and shall adopt or employ the necessary sanitary measures as set out herein.

(f) No person shall offer for hire or cause or permit any one to occupy residences or living premises previously occupied by a person ill with tuberculosis until such residences or living premises shall have been disinfected under the supervision of the local health authority.

(g) Whenever these rules and regulations, or whenever the order or direction of the local health authority requiring the disinfection of articles, premises, or apartments, shall not be complied with, or in case of any delay, said authority shall forthwith cause to be placed upon the door of the residence or living premises a placard as follows: "These residences or living premises have been occupied by a patient suffering with tuberculosis and they may have become infected. They must not again be occupied until my orders directing the renovation and disinfection of same have been complied with. This notice must not be removed, under penalty of law, except by an authorized health official."

(h) Every hotel proprietor, keeper of a boarding house or inn, and householder or head of a family in a house wherein any case of tuberculosis may occur, shall report the same to the local health authority within twelve (12) hours of the time of his or her first knowledge of the nature of such disease, unless previous notice has been given by the physician in attendance, nor shall any occupant of said house change his residence elsewhere without the consent of the local health authority.

No hotel proprietor, keeper of a boarding house or inn, or householder or head of a family wherein any case may occur shall be held liable for reporting a known or suspected case of tuberculosis so long as such report is based upon reasonable belief that the individual or individuals so reported have, or are suspected of having, tuberculosis.

(i) Immediately after being notified of any case of tuberculosis, the local health authority shall send to the attending physician or with his

approval directly to the patient, any such information that might be available by either the Department or the Board relative to the prevention and control of such disease.

#### Violations; penalties

Sec. 6. Any person violating the provisions of Sections 4 or 5 of this Act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than Fifty Dollars (\$50) nor more than Five Hundred Dollars (\$500) and/or by imprisonment in the county jail for not more than thirty (30) days.

#### Local regulations

Sec. 7. These regulations shall not be construed to prevent any city, county, or town from establishing such types of disinfection, isolation, control, and management of tuberculosis cases which they deem necessary for the preservation of the health of the individuals and the public; provided that such rules and regulations are not inconsistent with the provisions of this Code and are subordinate to said Code, and the rules and regulations prescribed by the Department. The local health authority shall at once furnish the Department with a true copy of any such regulations adopted by said local authorities.

Provided, however, that no provision in this Act shall be construed in any manner such that it would deprive any person of his right to depend on prayer or spiritual means alone for healing, in the practice of the principles, tenets, or teachings of his religion; provided that in so doing the sanitary, isolation and quarantine rules and regulations under this Act are complied with.

#### Who admitted

Sec. 8. Persons afflicted with tuberculosis who shall have been residents of this State at the time of filing of their applications with the county judge as hereinafter provided, shall be admitted to State Tuberculosis Hospitals.

Non-resident indigents afflicted with tuberculosis who have been quarantined under the provisions of Section 5 herein may be admitted to a State tuberculosis hospital pending their return to the State of their residence.

#### Classification of patients

Sec. 9. Patients admitted to State tuberculosis hospitals shall be two (2) classes:

- (1) Indigent public patients and
- (2) Non-indigent public patients.

(a) Indigent public patients are those who possess no property of any kind nor have anyone legally responsible for their support, and who are unable to reimburse the State. This class shall be supported at the expense of the State.

(b) Non-indigent public patients are those who possess some property out of which the State may be reimbursed, or who have someone legally responsible for their support. This class shall be kept and maintained at the expense of the State as in (a) above, but in such case the State shall have the right to be reimbursed for the support of such patients, and the claim of the State shall constitute a valid lien against any property of any such patient, or in case he has a guardian, against any property of his which is in the possession of said guardian, or against the person or persons who may be legally responsible for his support and financially able to contribute as herein provided. Such claim may be collected by suit or oth-

er proceedings in the name of the State of Texas by the County or District Attorney of the county from which said patient is sent or the Attorney General against such patient or his guardian or the person or persons legally responsible for his support; and the suit shall be brought in the county from which such patient was sent. Such suit shall be instituted upon the written request of the head of the State tuberculosis hospital accompanied by a certificate as to the amount due the State, which in no case shall exceed the actual cost of maintaining and treating such patient. In all suits or proceedings, the certificate of the head of the hospital shall be sufficient evidence of the amount due the State for the support of such patient. It shall be the duty of said Attorney upon such request being made to institute and conduct such proceedings and for which he shall be entitled to a commission of ten per cent (10%) of the amount collected. All moneys so collected, less such commission, shall be paid by said County Attorney to the head of said hospital, who shall receive and receipt for the same.

#### **Application for admission**

Sec. 10. The patient, or parent, guardian, or friend of any patient, seeking admission may make application in writing and under oath to the county judge of the county wherein such patient resides, for admission of said patient into a State tuberculosis hospital. Such application for admission shall be in the form and contain such information as prescribed by the Board.

Provided, however, that upon the recommendation of any physician licensed to practice medicine in Texas the Board in its discretion may admit, immediately and directly to a State tuberculosis hospital, without application being made to the County Judge of the county wherein the patient resides, any child under the age of six (6) years who is afflicted with tuberculosis.

#### **Certificate of examination**

Sec. 11. The application for admission to a State tuberculosis hospital shall be accompanied by a certificate of a physician licensed to practice medicine in the State of Texas by the Texas State Board of Medical Examiners, or in the case of indigent patients by a certificate from the local health authority if such individual or individuals are licensed to practice medicine in the State of Texas by the Texas State Board of Medical Examiners, stating that he has thoroughly examined the person for whose admission application has been made, and that such person is suffering from tuberculosis. The certificate shall be in the form and contain such information as prescribed by the Board.

In the event that the person applying for admission to a State tuberculosis hospital is afflicted with a contagious, infectious, or transmissible disease other than tuberculosis, then in such event the head of the State tuberculosis hospital to whom application has been made may use the presence of such contagious, infectious, or transmissible disease other than tuberculosis as a valid reason for delaying admission until such contagious disease is rendered non-contagious.

It shall be the duty of the County Judge to certify that the physician making the certificate is a reputable physician actively engaged in the practice of his profession, and has complied with the laws of this State governing licenses to practice medicine.

#### **Duties of Board**

Sec. 12. (a) The Board upon receiving an application for admission to a State tuberculosis hospital shall designate the State tuberculosis hos-

pital to which the application shall be sent. The hospital so designated by the Board upon receipt of such application shall review the same for purpose of approval or disapproval. Due consideration shall be given by the Board to the wishes of the patient and the accessibility to the State tuberculosis hospital when designating the hospital to which the application for admission will be sent.

(b) The Board shall prepare and adopt by-laws, rules, and regulations for the government, control, and management of all State tuberculosis hospitals, prescribing the duties of all officers and employees, and for enforcing the necessary discipline and restraint of all patients.

(c) The Board shall appoint for each of said tuberculosis hospitals a physician licensed to practice medicine in the State of Texas by the Texas State Board of Medical Examiners. Each physician so appointed shall be the head of the hospital under his control and shall have power to remove with just cause any person employed in said hospital over which he has such authority. Any such physician so appointed shall be removable at the discretion of the Board. The provisions applying to the powers and duties of the Board and of the head of the hospital as set forth in this Section are in addition to any others provided for by law. The Board shall supply each hospital with the necessary personnel for the operation and maintenance of such hospital.

(d) In addition to the specific authority granted by other provisions of law, the Board is authorized to prescribe the form of application, certificates, records, and reports provided for under this Code and the information required to be contained therein; to require reports from the head of any State tuberculosis hospital relating to the admission, examination, diagnosis, release, or discharge of any patient; to visit each hospital regularly to review the admitting procedures and care and treatment of all new patients admitted between visits; to investigate by personal visit complaints made by any patient or by any person on behalf of a patient; and to adopt such rules and regulations not inconsistent with the provisions of this Code as may be necessary for proper and efficient hospitalization of tuberculous patients.

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

Unless otherwise expressly provided in this Code, a power granted to, or a duty imposed upon the head of a hospital may be exercised or performed by an authorized employee, but the delegation of a duty does not relieve the head of a hospital from his responsibility.

(f) The Board may return a non-resident patient admitted to a State tuberculosis hospital in this State to the proper agency of the State of his residence.

The Board may permit the return of any resident of this State who is admitted to a tuberculosis hospital in another state.

All expenses incurred in returning admitted patients to other states shall be paid by this State. The expense of returning residents of this State shall be borne by the states making the return.

(g) The Board is authorized to enter into reciprocal agreements with the proper agencies of other states to facilitate the return to the states of their residence of patients admitted to State tuberculosis hospitals in this or other states.



**Duties of County Judge**

Sec. 13. (a) If the County Judge is not satisfied as to the showing made in said application and certificate, or either, he may subpoena witnesses and examine them under oath concerning such matter, and if it appears to the County Judge that such person is entitled to admission into a State tuberculosis hospital under the provisions of this Code, he shall forward the application for admission, together with the certificate of examination hereinbefore described to the Board.

(b) If said County Judge shall find that the person for whom application is made is in fact not indigent, then he shall make application for such person as a non-indigent patient.

(c) If the County Judge shall determine not to make such an application for such person, then such person may make an application direct to the Board, and if in the judgment and opinion of the Board such patient is entitled to admission into a State tuberculosis hospital, then the Board shall order him to be admitted.

(d) The County Judge shall see that each patient admitted to a State tuberculosis hospital is supplied with such necessary clothing as may be prescribed by the Board. The expenses of the clothing and transportation of public indigent patients shall be paid by the county from which the patient is sent. In the event that an indigent patient is admitted under the provisions of the preceding paragraph, the head of the State tuberculosis hospital where the patient is admitted shall supply the patient with such clothing as is necessary and his certificate thereof shall be full evidence that the same was so supplied and of the value thereof, and the county from which said patient comes shall pay the cost thereof upon presentation of said certificate. Non-indigent public patients shall pay for their clothing and transportation.

**No preference in admission**

Sec. 14. (a) No patient in any state tuberculosis hospital shall be discriminated against but all patients shall be treated alike, given equal facilities, equal attention and equal treatment; it being recognized, however, that the condition of the individual patient may necessitate a greater or lesser degree of care and treatment.

(b) No patient in any such hospital shall be permitted to give any officer, servant, agent, or employee in any such hospital any tip, pay, or reward of any kind, and if such patient does so, it shall be a cause for his expulsion from said hospital, and the discharge of any servant accepting the same; and the Board shall see that this provision is rigidly enforced.

**Private additions to State Tuberculosis Hospitals**

Sec. 15. (a) The Board is hereby authorized, on request of any charitable fraternity or society in this State, to permit the erection, furnishing, and maintenance by such fraternities or societies upon the grounds of any State tuberculosis hospital or dormitories and such other accommodations as may be desired by any such fraternity or society for the proper treatment and care of any member or members of such fraternity or society or for any members of their families, or for the widows and children of deceased members of such fraternity or society, who may be afflicted with tuberculosis, and which accommodations so erected shall be reserved for the preferential use of such members and members of their families and of the widows and children of deceased members of the fraternity or society so erecting, furnishing, and maintaining such accom-

modations hereunder. The State shall be at no expense whatever in the erection, furnishing, or maintenance of such accommodations, and the fraternity or society entering a patient or patients shall provide such pro rata part for the maintenance of such patient or patients as may be found just and equitable pending the next succeeding appropriation to be made by the Legislature for the maintenance of said State tuberculosis hospitals. "Children" under this Article shall mean any minor child of a deceased member of such fraternity or society. Such accommodations or any part of them not being used or required by those entitled to such preference, may be used and occupied by other patients in said State tuberculosis hospitals at the discretion of the head of the hospital and without any charge therefor against the State.

(b) Plan of buildings.

All matters pertaining to the location, construction, style or character of buildings, term of their existence and all other questions arising in connection with the granting of the permission to erect and maintain the accommodations contemplated in the preceding Section, shall be arranged and agreed upon in writing by and between the Board on the part of the State and the properly authorized officers, board, or committee of each respective charitable fraternity or society, and such written agreement in each case shall be recorded at length upon the minutes of the Board.

(c) Rules of admission.

The members of such charitable fraternities or societies, members of their families, and the widows and children of deceased members thereof, shall be classified according to the facts the same as other patients of said State tuberculosis hospitals are classified, and shall be admitted, maintained, cared for and treated in said hospitals upon the same terms and conditions and under the same regulations as all other patients therein, save and except that they shall at all times have the preference and right to occupy the accommodations erected and maintained hereunder by their several and respective fraternities or societies when not already filled with others having the same preferential right.

#### Relief of indigent persons

Sec. 16. When any indigent person suffering from tuberculosis is in a county other than his residence and makes application for financial relief to any local health authority or commissioners court or to the mayor, before any relief is granted, he shall make an affidavit that he is indigent and unable to provide for himself. When such affidavit is made, the local health authority or commissioners court or mayor or county judge shall forthwith notify the State Health Officer of the case, giving the name of the patient and the place of his residence. If such patient is a bona fide resident of any county within this State, it shall be the duty of the State Health Officer and he shall have the power to provide for and furnish said indigent person with the necessary means of transportation and subsistence to return such indigent to the county of his residence.

#### Conveyances by counties in establishing tuberculosis hospitals

Sec. 17. All counties in this State are hereby authorized to donate and convey land to the State of Texas in consideration of the establishment of a State tuberculosis hospital by the Board for Texas State Hospitals and Special Schools. The desirability, manner, and form of the donation and conveyance shall be within the discretion of the Commissioners Court of the particular county. No provision of this Section shall authorize the Commissioners Court of any such county to convey any

land given or donated or granted to the county for the purpose of education in any manner other than that which is or shall be directed by law.

**Appropriations**

Sec. 18. All appropriations heretofore made and now effective or appropriations hereafter made by the Legislature for the use and benefit of McKnight State Tuberculosis Hospital, Sanatorium, Texas; San Antonio State Tuberculosis Hospital, San Antonio, Texas; Legion Branch of San Antonio Tuberculosis Hospital, Kerrville, Texas; East Texas Tuberculosis Hospital, Tyler, Texas; Harlingen State Tuberculosis Hospital, Harlingen, Texas; or in names previously used by these hospitals, shall remain available for their use and benefit.

**Contracts**

Sec. 19. All contracts heretofore entered into in behalf of McKnight State Tuberculosis Hospital, Sanatorium, Texas; San Antonio State Tuberculosis Hospital, San Antonio, Texas; Legion Branch of San Antonio Tuberculosis Hospital, Kerrville, Texas; East Texas Tuberculosis Hospital, Tyler, Texas; Harlingen State Tuberculosis Hospital, Harlingen, Texas; or in names previously used by these hospitals, are hereby ratified, confirmed, and validated for and in their behalf.

**Incorporation of statutes into Code**

Sec. 20. Article 1970a—1 as to jurisdiction of specially created Probate Courts, Article 4493 as to adequate facilities in county hospitals, and Section 6A of Article 4437a as to tuberculosis control in counties of two hundred thousand (200,000) or more, of the Revised Civil Statutes of Texas, 1925, as amended, are by reference hereby adopted and made part of this Code. Acts 1959, 56th Leg., p. 379, ch. 181.

Effective 90 days after May 12, 1959, date of adjournment.

Board of Texas State Hospitals, see art. 3174b.

Facilities of county hospitals, see art. 4493.

Jurisdiction of specially created probate courts as to persons afflicted with tuberculosis, see art. 1970a—1.

State Hospitals, see art. 3184 et seq.

Tuberculosis control in counties of 200,000 or more, see art. 4437a.

Section 21 of Acts 1959, 56th Leg., p. 379, ch. 181, § 21 amended art. 3174b, § 8. Sec-

tions 22 to 27 amended art. 4477, Rules 3, 4, 14, 20, 23, 25. Section 28 repealed arts. 3183d, 3238b-3246, 3248-3251a, 3254a, 3254a—1, 3254d, 3254d—1, 4440.

Section 29 provided: "The repeal of any law by this Code shall not affect or impair any act done or right, obligation, or penalty existing or accrued under the authority of the law repealed; and such law shall be treated as still remaining in force for the purpose of sustaining any proper action concerning any such act, right, obligation, or penalty." Section 30 contained a severability clause.

**CHAPTER FIVE—COUNTY HOSPITAL**

Art. 4494n—1. Validating organization and creation of county-wide hospital districts in counties of 190,000 and Galveston County [New].  
4494q. Lamar County Hospital District [New].

Art. 4494q—1. Jefferson County Hospital District [New].  
4494q—2. Hidalgo County Hospital District [New].  
4494q—3. Hospital district in Comanche County [New].

**Art. 4493. Adequate facilities**

Texas Tuberculosis Code, see art. 4477—

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

Art. 4494n. County hospital districts; Counties of 190,000 and Galveston county

Retirement System

Sec. 5a. The Board of Managers may in addition to retirement programs authorized by this Act establish such other retirement program for the benefits of its employees as it deems necessary and advisable. Added Acts 1959, 56th Leg., p. 587, ch. 271, § 1.

Emergency. Effective May 26, 1959.

Section 2 of the amendatory Act of 1959 contained a severability clause.

Art. 4494n—1. Validating organization and creation of county-wide hospital districts in counties of 190,000 and Galveston County

Section 1. The organization and creation of all county-wide hospital districts created or sought to be created by authority of Chapter 266, Acts of the Fifty-third Legislature of 1953 as amended by Chapter 257, Acts of the Fifty-fourth Legislature of 1955 (being Article 4494n, Vernon's Civil Statutes of Texas) and heretofore established or attempted to be established by the Commissioners Court of any county of the State of Texas are hereby ratified, validated and confirmed in all respects to the same extent and to like effect as if duly and legally established in the first instance. All acts of the Commissioners Courts of the counties of such districts in ordering an election or elections submitting to a vote of the qualified property taxpaying voters of the counties the following statutory proposition:

"The creation of a hospital district; providing for the levy of a tax not to exceed seventy-five cents (75¢) on the One Hundred Dollars (\$100) valuation; and providing for the assumption by such district of all outstanding bonds heretofore issued by \_\_\_\_\_ County, and by any City in said County for hospital purposes" are hereby ratified, validated and confirmed. Such election or elections and all acts of the Commissioners Courts in such counties in declaring the results thereof are hereby ratified, validated and confirmed. The fact that by inadvertence or oversight any act was omitted by the Commissioners Court or any official of any such county in ordering an election or elections or in giving sufficient statutory notice thereof or in declaring the results thereof, shall in nowise invalidate any of such proceedings or the creation of the hospital district sought to be created by such proceedings.

Sec. 2. This Act shall apply only to hospital districts created or sought to be created within counties eligible under the provisions of Article IX, Section 4 of the Texas Constitution and the aforementioned Article 4494n, Vernon's Civil Statutes of Texas, and in which an election has been held on the voting proposition specified in Section 1 hereof which resulted in the adoption of said proposition by a majority of the vote of the qualified property taxpaying voters in the county participating in said election.

Sec. 3. This Act shall not apply to any hospital district which is now involved in litigation in any district court of this State, the Court of Civil Appeals, or the Supreme Court of Texas, at the effective date of this Act, in which litigation the validity of the organization or creation of such hospital district is attacked, if such litigation is ultimately determined against the validity of the organization or creation of the hospital district. Acts 1959, 56th Leg., p. 10, ch. 5.

Emergency. Effective Feb. 23, 1959.

## Art. 4494q. Lamar County Hospital District

## Creation of district; election; ballots

Section 1. Lamar County may constitute itself a hospital district to take over the hospital system now operated by said County and thereafter administer the same by furnishing medical aid and hospital care to the indigent and needy persons residing in such county; provided, however, that such district shall not be created unless and until an election is duly held in said County, which said election may be initiated by the Commissioners Court upon its own motion or upon a petition of one hundred (100) resident qualified property tax-paying voters of said County to be held not less than thirty (30) days from the time such election is ordered by the Commissioners Court. At said election there shall be submitted to the qualified property tax-paying voters the proposition of whether or not a hospital district shall be created in the county, and a majority of such voters participating in the election voting in favor of the proposition shall be necessary. The ballots shall have printed thereon:

"FOR the creation of a county-wide hospital district; providing for the levy of a tax not to exceed seventy-five cents (75¢) on the One Hundred Dollars (\$100) valuation."

"AGAINST the creation of a county-wide hospital district; providing for the levy of a tax not to exceed seventy-five cents (75¢) on the One Hundred Dollars (\$100) valuation."

If there are any outstanding County hospital bonds, there shall be added to such proposition the assumption of the bonds by such district. The district shall be known as Lamar County Hospital District.

## Approval by voters; tax levy; bonds

Sec. 2. The District shall be deemed created in the event of an affirmative vote by the majority at said election. The Commissioners Court shall thereupon have the power to levy a tax for the benefit of the District along with county taxes, using the same values and the same tax roll, of not to exceed seventy-five cents (75¢) on the One Hundred Dollars (\$100) valuation on all taxable property within the district subject to district taxation for the purpose of creating a sinking fund on bonded indebtedness on present or future bonds, and for the maintenance and operation of the hospital system. The district shall have the power and authority to issue and sell bonds for the purchase, acquisition, construction, equipment, enlargement, operation and maintenance of the hospital system; provided, however, that a sufficient tax shall be levied to provide an interest and sinking fund to meet the maturities, which said tax shall be a part of the seventy-five cents (75¢) tax herein authorized. Any bonds issued by such district must, however, be authorized by a vote of the legally qualified tax-paying voters residing in such district as in the case of bonds issued by other political subdivisions of the State.

Transfer of hospital property to district; assumption  
of bonded indebtedness

Sec. 3. The Commissioners Court shall execute and deliver to the district a written instrument conveying to said district all hospital property, real, personal or mixed, and the district shall assume all bonded indebtedness of said county hospital system.

**Board of Hospital Managers; appointment; membership;  
term; power and authority**

Sec. 4. The Commissioners Court, unless otherwise provided by Act of the Legislature, shall appoint a Board of Hospital Managers consisting of not less than five (5) nor more than seven (7) members who shall serve, for a term of two (2) years with overlapping terms, if desired, with initial appointments to terms of office arranged accordingly, without pay, and whose duties shall be to manage, control, and administer the hospital or hospital system of the district in accordance with the laws of the State. The Board of Managers shall have the power and authority to promulgate rules and regulations for the operation of the hospital or hospital system and shall employ such doctors, technicians, nurses, and employees as may be deemed advisable for the efficient operation of the hospital or hospital system. The Board shall be responsible to the Commissioners Court for the operation of the hospital, and individual members may be removed for cause. The county auditor shall disburse the funds of the district upon orders of the Board unless the Board orders otherwise.

**Tax levy by city or county in district**

Sec. 5. Said County, except as herein authorized, and any city therein, shall not, after the organization of such district, levy any tax for hospital purposes and such district shall be deemed to have assumed full responsibility for the furnishing of medical and hospital care for the needy and indigent persons residing in said district. Acts 1959, 56th Leg., p. 917, ch. 422.

*Effective upon adoption of amendment of Const. art. IX by the addition of sections 6, 7, and 8, as proposed by House Joint Resolution No. 39, 56th Leg., 1959, authorizing the creation of certain hospital districts, to be voted on at the general election in November, 1960.*

**Art. 4494q—1. Jefferson County Hospital District**

**Purpose**

Section 1. Under and pursuant to the provisions of Section 5 of Article IX, Constitution of the State of Texas, there may be created a Hospital District within Jefferson County, the boundaries of which shall include only the area comprising the Jefferson County Drainage District No. 7 and the Port Arthur Independent School District as such boundaries existed on the 1st day of January, 1957, which Districts' boundaries are of record in the County Clerk's office of Jefferson County, Texas, with the power to issue bonds for the sole purpose of purchasing a site for and the construction and initial equipping of a hospital system, and further the power to levy a tax of not to exceed seventy-five cents (75¢) on One Hundred Dollar (\$100) property valuation therein for the purpose of paying the principal and interest on such bonds.

Judicial knowledge shall be taken that the boundaries of Jefferson County Drainage District No. 7 and Port Arthur Independent School District and this District are the same as the boundaries of said Jefferson County Drainage District No. 7 and Port Arthur Independent School District were on the 1st day of January, 1957.

**Creation of District**

Sec. 2. (a) The Hospital District shall be created in the following manner on or after one hundred and eighty (180) days from the final pas-

sage of this Act upon the motion or upon the petitions of one hundred (100) resident qualified property taxpaying voters within the boundaries of said District, The Commissioners Court of Jefferson County shall call an election to be held within said District to approve the creation of such District. Said Commissioners Court shall order such election within ten (10) days of the receipt of said motion or petition and the election shall be held within said District within thirty (30) days after it is ordered.

(b) At the election there shall be submitted to the resident qualified property taxpaying voters within the boundaries of said District who have duly rendered their property for taxation upon the tax rolls of either Jefferson County Drainage District No. 7 or said Port Arthur Independent School District, the proposition of whether or not the Hospital District shall be created within said boundaries; and a majority of the resident qualified property taxpaying voters voting at said election who have duly rendered their property for taxation upon the rolls of either said Jefferson County Drainage District No. 7 or said Port Arthur Independent School District voting in favor of the proposition shall be necessary to create said District.

The ballots shall have printed thereon:

“FOR the creation of a Hospital District within the boundaries of Jefferson County Drainage District No. 7 and Port Arthur Independent School District.”

“AGAINST the creation of a Hospital District within the boundaries of Jefferson County Drainage District No. 7 and Port Arthur Independent School District.”

Notice of such election stating the time of the election, and the polling place and proposition shall be posted in a newspaper in general circulation in Jefferson County, Texas, once a week for two (2) consecutive weeks, the first notice not being more than twenty (20) days prior to the date of election.

(c) The results of said election shall be filed in the County Clerk's office of Jefferson County, Texas, within ten (10) days thereafter. And if the majority of the resident property taxpaying voters voting at said election who have duly rendered their property for taxation upon the tax rolls of either said Jefferson County Drainage District No. 7 or said Port Arthur Independent School District vote for the creation of the District, then within ten (10) days of the filing of said results the Commissioners Court shall order said District created and shall at such time appoint a Board of Directors to consist of not less than five (5) members to manage and operate the business of said District, until the 1st Saturday of April of the year following the creation of said District.

#### Management and control of district business

Sec. 3. The Board of Directors of said Hospital District shall elect a President and Secretary from the members to serve until said election; said Board of Directors shall have the full management and control of all business of said District, including but not limited to the power and authority to negotiate and contract with any person or body, public or private to purchase land, to construct and equip a hospital system, and to operate and maintain the hospital, and to negotiate and contract with other political subdivisions of the State or private individuals, associations or corporations for such purposes.

#### Creation; election

Sec. 4. (a) After the District and the qualification of the Board of Directors, the Board may order an election to be held within said District

at a time not less than twenty (20) days nor more than thirty (30) days from the date of such order at which time the qualified resident property taxpaying voters who have duly rendered their property for taxation upon the tax rolls of either said Jefferson County Drainage District No. 7 or said Port Arthur Independent School District shall vote to determine if bonds of the District shall be sold to purchase a site for a hospital system and/or to pay for the construction of the hospital system and/or the initial equipping of the hospital system and to authorize the levy of a tax of not to exceed seventy-five cents (75¢) on the One Hundred Dollars (\$100) valuation of property therein for the purpose of paying the principal and interest on such bonds. At such election the proposition to be voted on shall set forth the purpose of the bonds, the amount of bonds to be issued and the voters shall vote for the issuance of bonds for said purpose and levy of taxes in payment thereof, or against the issuance of bonds for said purpose and levy of taxes in payment thereof.

(b) Notice of such election, stating the time of the election, the polling place, the amount of bonds as determined by the Board to be necessary to be issued; the proposition to be voted on and the estimated cost shall be published in a newspaper in general circulation in Jefferson County, Texas, once a week for two (2) consecutive weeks, the first notice not being more than twenty (20) days prior to the date of election.

(c) The Board of Directors shall name the polling place in the District and shall appoint two (2) judges, one of whom shall be presiding judge, and two (2) clerks for each voting place designated by them. The Board of Directors shall provide the necessary ballots for said election, which shall be printed.

(d) Immediately after the election the presiding judges shall make return of the result in the same manner as provided for in general elections for State and County officials. Such return shall be made to the Board of Directors who shall at a regular or special session canvass said vote, and if a majority of said votes favor the issuance of bonds and levy of taxes, the Board of Directors shall so declare and enter the results in their minutes.

(e) After declaring the result of said election, the Board of Directors shall make and enter an order in their minutes directing the issuance of bonds for such District sufficient in amount to pay for such proposed project with all necessary actual and incidental expenses connected therewith not to exceed the amount specified in said order and voted of election.

(f) Before such bonds are offered for sale, there shall be forwarded to the Attorney General, a certified copy of all proceedings had in the organization of the District, and with reference to issuance of such bonds in connection with the bonds themselves, and such other information respecting same as he may require. The Attorney General shall carefully examine said bonds in connection with the record and Constitution and laws of the State governing the issuance of such bonds; and if such examination shows that such bonds are issued in conformity thereto, and that they are valid and binding obligations upon said District, he shall so officially certify.

(g) When said bonds are so approved, they shall be registered by the Comptroller in a book kept for that purpose and the certificate of the Attorney General as to their validity shall be preserved of record; whereupon such bonds shall be held prima facie valid in every action, suit or proceeding in which their validity may be brought into question. In every suit to enforce collection of such bonds and interest thereon, the only available defense against the validity of such bonds shall be forgery or fraud.



### Bonds

Sec. 5. (a) After such bonds have been so registered, the Directors shall sell same on the best terms and for the best price possible, not less than their face value and accrued interest; and shall promptly pay over to the District depository the proceeds of such sale to be placed to the credit of such District.

(b) At the time of the payment of interest or for redemption of District bonds, the depository shall receive and cancel any interest coupons so paid or any bonds so discharged, and when such interest coupon or bond shall be turned over to the Board of Directors the account of such depository shall be credited with the amount thereof, and such bond or coupon shall be cancelled and destroyed.

(c) When bonds have been so issued, the Board of Directors shall procure and deliver to the County Treasurer a well-bound book in which a list shall be kept of all such bonds with their manner of payment, amount, rate of interest, date of issuance, when due, where payable, amount received for same, and the tax levy to pay interest on and redeem such bonds; and such books shall at all times be open to the inspection of the parties interested, either as taxpayers or bond holders. Upon the payment of any bond, said Treasurer shall make an entry thereof in said book; and he shall receive for such services the same fees allowed by law to the County Clerk for recording deeds.

(d) Said Hospital District when it has issued bonds, may, by consent of the holders thereof, refund any bonds heretofore issued by issuing new coupon bonds for that purpose. Such refunding bonds shall not bear a greater rate of interest than the bonds in lieu of which they are issued. Interest shall be evidenced by coupons attached to such bonds, and may be payable annually or semi-annually, within the discretion of its Board of Directors; and such refunding bonds shall be payable serially, or otherwise, not exceeding forty (40) years from the date thereof, and shall be issued in denomination of One Hundred Dollars (\$100), or some multiple thereof; and a sufficient tax levy to meet the payment of the principal and interest of said refunding bonds shall be made before the delivery thereof, providing the refunding of any bonds shall not affect any taxes already due.

The refunding bonds hereby authorized shall be issued in the manner provided for the execution of fresh water supply district bonds under the laws of the State of Texas. Any sum to the credit of any sinking fund account on hand shall first be deducted in ascertaining the amount of refunding bonds to be issued, and such money shall in every case be applied to the payment of the outstanding bonds. No refunding bonds shall be issued and delivered until approved by the Attorney General, and registered by the State Comptroller; provided, however, that the Comptroller shall not register such refunding bonds until the old bonds in lieu of which such refunding bonds are issued are presented to him for cancellation; and after the registration of the new bonds the Comptroller shall cancel the old bonds and interest coupons and deliver such new bonds to the proper party or parties; provided, further, that the old bonds may be presented for cancellation, in installments, and a like amount of the new bonds registered and delivered as is herein provided.

### Contracts

Sec. 6. (a) Contracts for the making and construction of all improvements contemplated in this chapter, and all necessary work in connection

therewith, when the cost price exceeds Ten Thousand Dollars (\$10,000) shall be let to the lowest responsible bidder, furnishing satisfactory evidence of possessing equipment and facilities essential to the proper performance of such contract; after giving notice by advertising the same in one (1) or more newspapers of general circulation in this State, once a week for four (4) weeks, and by posting a notice for at least ten (10) days at the courthouse door. Such contract shall be in writing and signed by the contractors and Directors, and a copy so executed filed with the depository subject to inspection of all interested parties.

(b) The person, firm, corporation or association to which such contract is let shall give bond to the District in such amount as the Directors may determine, not to exceed the contract price, conditioned upon the faithful performance of the obligations, agreements and covenants of such contract, and for the payment to the District of all damages sustained in default thereof. Such bond shall be approved by the Board of Directors and shall be deposited with the depository, a true copy thereof being retained in the office of the Hospital District Secretary.

(c) All contracts shall be fulfilled in accordance with the specifications and under the supervision of the Board of Directors and Hospital District agents.

#### Election Expenses

Sec. 7. If said bonds and levying of taxes are approved by the voters, all expenses incident to calling and holding all elections shall be paid out of any District funds except interest and sinking funds for bonds.

#### Eminent domain

Sec. 8. The Hospital District shall have the right and power of eminent domain for the purpose of acquiring by condemnation any and all property of any kind or character, real, personal or mixed or any interest therein, including outright ownership of such property in fee simple absolute, within the boundaries of said Hospital District necessary or convenient to the exercise of the rights, powers, privileges and functions conferred upon it by this Act, in the manner provided by General Law with respect to condemnation; provided, that the said Hospital District shall not be required to make deposits in the registry of the Trial Court of the sum required by Paragraph No. 2 in Article 3268, Vernon's Civil Statutes of the State of Texas, 1925, or to make the bond required therein. In condemnation proceedings being prosecuted by the said Hospital District, the Hospital District shall not be required to pay in advance or to give bond or other security for costs in Trial Court nor to give any bond otherwise required for the issuance of a temporary restraining order or temporary injunction relating to a condemnation proceeding, nor to give bond for costs or for supersedeas bond on any appeal or writ of error proceeding to any Court of Civil Appeals or the Supreme Court.

#### Depositories

Sec. 9. Within thirty (30) days after the appointment of the Board of Directors of the Hospital District created under this Act, the said Board shall select a depository for such District in the manner provided by law for the selection of county depositories; and such depository shall be the depository of such District for a period of two (2) years thereafter until its successor is selected and qualified.

**Inspection**

Sec. 10. The Hospital District established or maintained under provisions of this Act shall be subject to inspection by any duly authorized representative of the State Board of Health or any State Board of Charities (or Public Welfare) that may hereafter be created, and of the Commissioners Court of the County, and resident officers shall admit such representatives into all Hospital District facilities and give them access on demand to all records, reports, books, papers, and accounts pertaining to the Hospital District.

**Donations, gifts and endowments**

Sec. 11. Said Board of Directors is authorized on behalf of said Hospital District to accept donations, gifts and endowments for the District, to be held in Trust by the Board of Directors for such purposes and under such directions, limitations, and provisions as may be prescribed in writing by donor, not inconsistent with proper management and objects of the District.

**Qualification of Voters**

Sec. 12. To be eligible to vote in any election to be held by this District to issue bonds and/or levy taxes a person must be a qualified voter under the General Election Laws of this State and a resident property taxpayer in said District who has duly rendered their property for taxation upon the tax rolls of either said Jefferson County Drainage District No. 7 or the Port Arthur Independent School District. Every person who offers to vote in any election held under the provisions of this Act shall take the following oath before the presiding judge of the polling place where he offers to vote, and such judge is authorized to administer same:

"I do solemnly swear that I am a qualified voter of Jefferson County and that I am a resident property taxpayer of the District who has duly rendered my property for taxation upon the tax rolls of either said Jefferson County Drainage District No. 7 or Port Arthur Independent School District."

**Board of Directors**

Sec. 13. (a) No person shall be appointed or elected as a member of the Board of Directors of said Hospital District unless he is a resident thereof and owns land subject to taxation therein and unless at the time of such election he shall be more than twenty-one (21) years of age.

(b) There shall be held a general election in said District on the 1st Saturday in April next after the said District is formed at which time five (5) Directors for said District shall be elected. The three (3) Directors receiving the highest vote shall serve for two (2) years. The other two (2) Directors shall serve for one (1) year. At the second annual election two (2) Directors shall be elected to serve for two (2) years. At the third annual election three (3) Directors shall be elected to serve two (2) years and thereafter there shall be an annual election of two (2) Directors in one (1) year and three (3) Directors in the next year in continuing sequence.

(c) All vacancies in the office of Director and other offices shall be filled by appointment by the Board of Directors for the unexpired term. In the event the number of Directors shall be reduced to less than three (3) then the remaining Director or Directors shall call a special election to fill said vacancies, and if they shall fail to do so within fifteen (15) days after such vacancies occur the County Judge of Jefferson County,

Texas, upon petition of any voter or creditor thereof shall order the holding of such election, fixing the date thereof, and order the publication of notice thereof by any County Sheriff and name the officers to hold such election. In any such election held by order of the County Judge the returns of an election shall be made to and filed in the office of the Clerk of the Court and he shall declare the result thereof. The officers elected shall furnish bond and qualify in the manner provided herein with reference to Directors first appointed for said District upon its organization.

(d) The Board of Directors shall organize by electing one (1) of their number as President and one (1) of their number as Secretary. Any three (3) members of the Board of Directors shall constitute a quorum and a concurrence of three (3) shall be sufficient in all matters pertaining to the business of the District.

(e) The Board of Directors shall meet at least monthly and shall hold such special meetings as they deem necessary and any taxpayer or resident or interested party may attend such meetings, but shall not participate in same without the consent of the Board of Directors and may present in an orderly manner to said Board of Directors such matters as they desire.

(f) The Board of Directors shall keep a true account of all their meetings and proceedings and shall preserve all contracts, records of notices, duplicate vouchers, duplicate receipts and all accounts and records of whatever kind in a safe place and shall be delivered to their successors in office.

(g) All vouchers for the payment of any funds of the District shall be signed by at least three (3) members of the Board of Directors.

(h) The Board of Directors shall have kept a complete book of accounts for such District, and shall on June 1st of each year select a competent auditor who shall examine the accounts, books and reports of the depository, the Assessor and Collector and Board of Directors, and make full report thereon, a copy of which shall be filed with the depository, and a copy with the Board of Directors, and one (1) with the County Clerk. Such reports shall state for what purposes the money from each fund has been expended.

(i) The Board of Directors shall employ all necessary employees for the proper handling and operation of such District and especially may employ a general manager, attorney, bookkeeper and architect, but shall have no power to employ anyone to operate or maintain the hospital or hospitals.

(j) The Board of Directors may purchase all necessary supplies, materials and office equipment to meet the needs of the District.

(k) Before entering upon his duties each member of the Board of Directors shall take and subscribe an oath faithfully to discharge the duties of his office without favor or partiality. The oath of the members of the Board of Directors originally appointed shall be filed with the County Clerk of Jefferson County, Texas. All members of the Board of Directors subsequently elected shall, prior to entering upon their duties, file said oath with the Secretary of said District.

(l) Each member of the Board of Directors shall give a good and sufficient bond for One Thousand Dollars (\$1,000) payable to said District conditioned upon the faithful performance of his duties.

(m) Members of the Board of Directors may be removed from office in the same manner and for the same causes as the Laws of the State of Texas provide for the removal of County officials.

(n) The members of the Board of Directors shall serve without compensation but shall be reimbursed for actual expenses incurred in the performance of their duties hereunder.

#### Suits

Sec. 14. (a) Said District when created shall be a governmental agency, body politic and corporate and through its Board of Directors, sue and be sued in any and all courts of this State in the name of such District and all courts of the State shall take judicial notice of the establishment of the District and said District shall contract and be contracted with in the name of such District.

(b) The name of said District shall be "The South Jefferson County Hospital District" and shall have a seal with said name on it.

(c) Said District shall have full right and authority to contract for the purchase of land for the hospital system, the construction of said hospital and the initial equipping of the hospital system and shall have such powers of government and with authority to exercise such rights, privileges and functions concerning the purposes for which it was created, as may be conferred by this Act or any other law in this State, to the benefit of which it may be entitled. No enumeration of specific powers herein shall be held a limitation upon the general powers conferred by the Act, unless distinctly so expressed.

#### Taxes

Sec. 15. (a) The County of Jefferson by its County Tax Assessor and Collector shall assess and collect all taxes of the District in the manner in which it assesses and collects the taxes of Jefferson County Drainage District No. 7 and turn over said taxes to the Jefferson County Treasurer who shall deposit same to the credit of the District at its designated depository.

(b) The County Tax Assessor and Collector shall receive one per cent (1%) of the total taxes shown on the completed roll for assessing such taxes and one per cent (1%) for collecting same; provided, however, that the compensation for the collection of delinquent taxes shall be five per cent (5%) of the amount collected.

(c) All taxes which have not been paid on the last day of January shall become delinquent on the first day of February each year and same shall be and remain a lien upon the property for which same were assessed although the owner be unknown or same be listed in the name of a person not the actual owner thereof or though the ownership be changed. All such property may be sold under a judgment of a court for all taxes, interest, penalty and costs assessed against same at any time after such taxes become delinquent. The District shall have authority to file suits for the collection of taxes against any and all property assessed for taxes and if the owner be unknown such suit may be filed against an unknown owner and the property sold under the judgment of the court. Taxes are not barred by any law of limitation and no law providing for a period of limitation as to debts or actions shall apply to such taxes.

#### Mergers

Sec. 16. In the event there is ever created a hospital district for the County of Jefferson or a hospital district created for the balance of the County not including the boundaries of this District, then the Board of Directors of this District may, at its discretion, determine to merge

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

with said county-wide hospital district or the district covering the balance of said County; provided, (1) that said District would assume all outstanding indebtednesses of this District; and (2) that said merger of districts be approved by the majority of the resident qualified property taxpaying voters voting at an election who have duly rendered their property for taxation upon the rolls of either Jefferson County Drainage District No. 7 or Port Arthur Independent School District. Notice of such election would be given in the same manner as herein provided for the calling of elections for the election of the members of the Board of Directors. Acts 1959, 56th Leg., p. 987, ch. 462.

Emergency. Effective May 30, 1959.

Section 17 of the Act of 1959 contained a severability clause.

## Art. 4494q—2. Hidalgo County Hospital District

### Title

Section 1. This Act shall be known and may be cited as "The Hidalgo County Hospital District Law of 1959".

### Purpose

Sec. 2. The purpose of this Act is to provide a method for establishment and administration of a county-wide hospital district in Hidalgo County, Texas, to provide hospital service, care, and treatment of indigent and needy inhabitants of Hidalgo County. Hidalgo County may elect to create a county-wide hospital district as provided herein, and when it has so elected, it shall be governed by the provisions of this law.

### Creation of district

Sec. 3. The County of Hidalgo, Texas may be constituted a Hospital District, which District shall always be co-extensive with the limits and boundary of the County of Hidalgo, Texas, for the sole purpose of providing or arranging for hospital care, treatment, and service for indigent and needy persons, residing in said Hospital District, as hereinafter set out, provided, however, that such Hospital District shall not be created unless and until an election is duly held in said Hidalgo County for such purpose, which said election may be initiated by the governing body of the County of Hidalgo upon its own motion, or upon a petition of one hundred (100) resident qualified property taxpaying voters, to be held not less than thirty (30) days from the time said election is ordered by the governing body of Hidalgo County. At the time the order for holding such election is entered by the Commissioners' Court, the commissioners shall set a tax rate of not to exceed Ten Cents (10¢) on the One Hundred Dollar (\$100) assessed valuation. At said election, there shall be submitted to the qualified property taxpaying voters the proposition of whether or not a Hospital District shall be created in the County; and a majority of the qualified property taxpaying voters participating in said election voting in favor of the proposition shall be necessary. The ballots shall have printed thereon:

"FOR the creation of a county-wide Hospital District; providing for the levy of a tax of not to exceed Ten Cents (10¢) on the One Hundred Dollar (\$100) assessed valuation".

"AGAINST the creation of a county-wide Hospital District; providing for the levy of a tax of not to exceed Ten Cents (10¢) on the One Hundred Dollar (\$100) assessed valuation".

The name of the district shall be the Hidalgo County Hospital District. Said District shall constitute a body politic and corporate, and its functions are declared to be governmental and public.

#### **Taxation**

Sec. 4. a. The governing body of the County of Hidalgo shall have the power and authority, and it shall be its duty, to levy on all property subject to hospital district taxation for the benefit of the District at the same time taxes are levied for county purposes, using the county values and the county tax roll, a tax not to exceed the amount as hereinabove specified on the One Hundred Dollar (\$100) valuation of all taxable property within the Hospital District, for the purpose of providing for the operation and maintenance of the Hospital District.

b. The tax so levied shall become a lien on and shall be collected on all property subject to Hospital District taxation by the Assessor and Collector of Taxes for the county on the county tax values, and in the same manner and under the same conditions as county taxes. The Assessor and Collector of Taxes shall charge and deduct from payments to the Hospital District the fees for assessing and collecting the tax at the rate of not exceeding one and one half per cent (1½%) on the amounts collected as may be determined by the governing body of the county. Such fees shall be deposited in the county's general funds. Interest and penalties on taxes paid to the Hospital District shall be the same as in the case of county taxes. Discounts shall be the same as for county taxes. The residue of tax collections, after deduction of discounts and fees for assessing and collecting, shall be deposited in the Hospital District depository; and such funds shall be withdrawn only as provided herein. All other income of the Hospital District shall be deposited in like manner with the District depository.

#### **Funds; Board of Hospital Managers**

Sec. 5. There shall vest in the Hospital District and become the funds of the Hospital District the unspent portions of any funds theretofore set up or appropriated by budget or otherwise by the County of Hidalgo, for the hospital care, treatment, and service of needy and indigent, sick, diseased, or injured persons of Hidalgo County for the year within which the Hospital District comes into existence, thereby providing such Hospital District with funds with which to maintain and operate for the remainder of such year.

a. The Commissioners Court of Hidalgo County, as soon as the Hospital District is created and authorized at the election hereinabove provided, and there have been appointed and qualified the Board of Hospital Managers hereinafter provided for, shall transfer to said Hospital District the funds theretofore budgeted, appropriated, and set aside to furnish hospitalization for the county's needy and indigent, sick, diseased, and injured persons upon being furnished the certificate of the Chairman of the Board to the fact that a depository for the District's funds has been selected and has qualified; which funds shall, in the hands of the Hospital District and of its Board of Hospital Managers, be used for such purposes.

#### **Powers of board; appointment of administrator; liability of district; quorum**

Sec. 6. a. The duly elected, qualified, and acting County Judge and Commissioners of Hidalgo County shall act and serve as the Board of Hospital Managers. They shall receive no compensation for their services, but shall be entitled to reimbursement for their actual expenses in connection

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

with their Hospital District duties. Their terms shall be co-incidental with their respective terms as County officials. Their duties shall be to manage and administer the Hospital District. The District shall have the power and authority to sue and be sued in its name. The Board is authorized to promulgate rules and regulations for the operation of the Hospital District.

b. The Board may appoint a general manager, if necessary, to be known as the Administrator of the Hospital District. The Administrator shall hold office for a term not exceeding two (2) years, and shall receive such compensation as may be fixed by the Board. The Administrator shall be subject to removal at any time by the Board. The Administrator shall, before entering into the discharge of his duties, execute a bond payable to the District, in the amount of not less than Ten Thousand Dollars (\$10,000), conditioned that he shall well and faithfully perform the duties required of him, and containing such other conditions as the Board may require. The Administrator shall perform all duties which may be required of him by the Board, and shall supervise all of the work and activities of the District, and have general direction of the affairs of the District, within such limitations as may be prescribed by the Board. He shall be a person qualified by training and experience for the position of Administrator.

c. The Board of Managers shall have the authority to employ such employees of every kind and character as may be deemed advisable for the efficient operation of the Hospital District; provided that no contract or term of employment shall exceed the period of two (2) years.

d. The Hospital District shall be liable for necessary hospital service, care and treatment of the county's sick, diseased, or injured persons, who are determined to be needy or indigent, as hereinafter provided in this Act. The liability of the District and the basis for which it will make payment for such service, care, and treatment is as follows: The District will determine the standard of service, care and treatment, within sound and generally acceptable hospital standards, to be rendered to such patients, and it will fix and establish the rate of compensation to be paid for such service, care, and treatment. It will make contractual agreements with the various institutions within the county, rendering such service, care, and treatment, for payment therefor on the above basis.

e. A majority of the Board of Hospital Managers shall constitute a quorum for the transaction of any business. The County Judge of Hidalgo County shall serve as Chairman of the Board, and he shall preside; or in his absence a chairman pro tem shall preside; and the County Clerk will serve as Secretary of the Board. The Board shall require the secretary to keep suitable records of all proceedings of each meeting of the Board. Such record shall be read and signed after each meeting by the chairman or the member presiding, and attested by the secretary. The Board shall have a seal, on which shall be engraved the name of the Hospital District; and said seal shall be kept by the secretary and used in authentication of all acts of the Board.

#### Purchases and expenditures

Sec. 7. The governing body of the County of Hidalgo shall have the power to prescribe the method and manner of making purchases and expenditures by and for such Hospital District, and also shall be authorized to prescribe all accounting and control procedures, or may delegate any or all such powers to the Board of Managers of such District by the adoption of an appropriate resolution or order to that effect. The Hospital District shall pay all salaries and expenses necessarily incurred by the County or



any of its officers and agents in performing any duties which may be prescribed or required under this Section. It shall be the duty of any officer, employee or agent of such County to perform and carry out any function or service prescribed by the governing body of the County hereunder.

#### **Assistant to administrator; bond**

Sec. 8. In the event of incapacity, absence or inability of the Administrator to discharge any of the duties required of him, the Board may designate an assistant to the Administrator to discharge any duties or functions required of the Administrator. Such assistant or other person shall give such bond and have such limitations upon his authority as may be fixed by the order of the Board.

#### **Annual report and budget**

Sec. 9. Once each year, as soon as practicable after the close of the fiscal year, the Administrator of the Hospital District shall report to the Board of Managers, a full sworn statement of all moneys and choses in action received by such District and how disbursed or otherwise disposed of. Such report shall show in detail the operations of the District for the term. Under the direction of the Board of Managers, he shall prepare an annual budget which shall be approved by the Board of Managers.

#### **Depository**

Sec. 10. Within thirty (30) days after the creation of the District, the Board shall select a depository for such District in the manner provided by law for the selection of county depositories; and such depository shall be the depository of such District for a period of two (2) years thereafter, or until its successor is selected and qualified. In the alternative, the Board may elect to use the depository theretofore selected by the county.

#### **Representation by attorneys**

Sec. 11. The Board of Hospital Managers may be represented in all legal matters by the attorneys charged with representing the County of Hidalgo in civil matters, and in such event the District shall contribute sufficient funds to the general fund of the County of Hidalgo for the account of the budget of such attorneys to pay all additional salaries and expenses incurred by such attorneys in performing the duties required of them by the District; provided, however, that the Board may in its discretion employ legal counsel of its own selection if it deems advisable.

#### **Furnishing hospital care for needy**

Sec. 12. After creation of the Hospital District authorized by this Act, neither the County of Hidalgo nor any incorporated city therein shall levy any tax for the purpose of providing hospital service, care, or treatment for needy and indigent sick, diseased, or injured residents of such county or cities; and such Hospital District shall be deemed to have assumed full responsibility for the furnishing of hospital care and treatment and service for the needy and indigent persons residing in said Hospital District from the date of the formation of said Hospital District. Nothing herein shall prohibit incorporated cities within said Hospital District from levying taxes for city owned hospitals or hospital facilities, but no taxes shall be levied by said cities for hospital care or treatment of indigent and needy persons or for the maintenance or operation of hospitals for the needy and indigent, it being the intention of this Act to provide such care and treatment for such persons through the county-wide hospital district.

**Requests for hospital care; payment of costs**

Sec. 13. a. Whenever a patient, claiming to be indigent and needy, requests or has been furnished hospital care, treatment, or services provided for by this Act, the Administrator shall cause inquiry to be made as to his circumstances, and his financial ability to pay for said services. The Administrator shall utilize, to the extent possible and permissible, the information of any and all welfare agencies, or similar agencies, that obtain relevant information as to person's needs and financial status, to assist in determining whether such person is indigent or needy, and shall avoid as much as possible, any duplication of effort, time, and expense, and make maximum utilization of such available information. If he finds that such patient or any relatives who are legally liable to pay for his care and treatment in whole or in part, are not indigent or needy, an order shall be made directing such patient, or said relatives, to pay to the treasurer of the Hospital District for the support of such patient a specified sum per week, in proportion to their financial ability, but such sum shall not exceed the actual cost of such hospital care and treatment. The District shall have power and authority to collect such sum from the estate of the patient, or his relatives legally liable for his support, in the manner provided by law for the collection of expenses of the last illness of a deceased person. If the Administrator finds that such patient or said relatives are not able to pay, either in whole or in part, for his care and treatment in such hospital, the same shall become a charge upon the Hospital District. Should there be a dispute as to the ability to pay, or doubt in the mind of the Administrator, the County Judge of Hidalgo County shall hear and determine same, after calling witnesses, and shall make such order as may be proper.

b. Whenever an indigent patient has been furnished hospital care or treatment by the Hospital District at the request of any county other than Hidalgo, such county shall be liable to pay for the actual cost of his support, care, and treatment immediately after statements have been presented by the District, and if not paid shall become a charge on its general fund collectible by a suit in any court of competent jurisdiction.

**Donations, gifts and endowments**

Sec. 14. Said Board of Managers of the Hospital District is authorized on behalf of said Hospital District to accept donations, gifts, and endowments for the Hospital District, to be held in trust or otherwise and administered by the Board of Managers for such purposes and under such directions, limitations, and provisions as may be prescribed in writing by donor, not inconsistent with proper management and objects of Hospital District. Acts 1959, 56th Leg., p. 1027, ch. 475.

Effective 90 days after May 12, 1959, date of adjournment.

Section 15 of the Act of 1959 contained a severability clause.

**Art. 4494q—3. Hospital district in Comanche County****Purpose**

Section 1. If the provisions of House Joint Resolution No. 39 of the 56th Legislature, Regular Session, 1959, are adopted by the qualified electors at the November, 1960, General Election, the provisions of this Act shall thereafter be effective and there may be created a Hospital District to be co-extensive with the limits of County Commissioners Precinct No. 4 of Comanche County, Texas, as such boundaries existed

on the 1st day of January, 1959, with the power to issue bonds for the sole purpose of purchasing a site for and the construction and initial equipping of a hospital system, and further the power to levy a tax of not to exceed seventy-five cents (75¢) on One Hundred Dollar (\$100) property valuation therein for the purpose of paying the principal and interest on such bonds.

#### Creation of District

Sec. 2. (a) The Hospital District shall be created in the following manner after the adoption of the provisions of House Joint Resolution No. 39 of the 56th Legislature, Regular Session, 1959; by the qualified electors at the General Election of November, 1960: Upon the motion or upon the petitions of one hundred (100) resident qualified property taxpaying voters within the boundaries of said precinct, the Commissioners Court of Comanche County shall call an election to be held within said precinct to approve the creation of such precinct. Said Commissioners Court shall order such election within ten (10) days of the receipt of said motion or petition and the election shall be held within said precinct within thirty (30) days after it is ordered.

(b) At the election there shall be submitted to the resident qualified property taxpaying voters within the boundaries of said precinct who have duly rendered their property for taxation upon the tax rolls of said precinct, the proposition of whether or not the Hospital District shall be created within said boundaries; and a majority of the resident qualified property taxpaying voters voting at said election who have duly rendered their property for taxation upon the rolls of said precinct voting in favor of the proposition shall be necessary to create said precinct.

The ballots shall have printed thereon:

“FOR the creation of a Hospital District within the boundaries of County Commissioners Precinct No. 4 of Comanche County, Texas.”

“AGAINST the creation of a Hospital District within the boundaries of County Commissioners Precinct No. 4 of Comanche County, Texas.”

Notice of such election stating the time of the election, and the polling place and proposition shall be posted in a newspaper in general circulation in Comanche County, Texas, once a week for two (2) consecutive weeks, the first notice not being more than twenty (20) days prior to the date of election.

(c) The results of said election shall be filed in the County Clerk's office of Comanche County, Texas, within ten (10) days thereafter. And if the majority of the resident property taxpaying voters voting at said election who have duly rendered their property for taxation upon the tax rolls of said precinct vote for the creation of the District, then within ten (10) days of the filing of said results the Commissioners Court shall order said District created and shall at such time appoint a Board of Directors to consist of not less than five (5) members to manage and operate the business of said District, until the 1st Saturday of April of the year following the creation of said District.

#### Board of directors; president and secretary; management and control of district

Sec. 3. The Board of Directors of said Hospital District shall elect a president and secretary from the members to serve until said election; said Board of Directors shall have the full management and control of all business of said District, including but not limited to the power

and authority to negotiate and contract with any person or body, public or private to purchase land, to construct and equip a hospital system, and to operate and maintain the hospital, and to negotiate and contract with other political subdivisions of the state or private individuals, associations or corporations for such purposes.

Election; bond issue and tax levy; notice; polling place; return; issuance of bonds; certification and registration

Sec. 4. (a) After creation of the District and the qualification of the Board of Directors, the Board may order an election to be held within said District at a time not less than twenty (20) days nor more than thirty (30) days from the date of such order at which time the qualified resident property taxpaying voters who have duly rendered their property for taxation upon the tax rolls of either said precinct shall vote to determine if bonds of the District shall be sold to purchase a site for a hospital system and/or to pay for the construction of the hospital system and/or the initial equipping of the hospital system and to authorize the levy of a tax of not to exceed seventy-five cents (75¢) on the One Hundred Dollars (\$100) valuation of property therein for the purpose of paying the principal and interest on such bonds. At such election the proposition to be voted on shall set forth the purpose of the bonds, the amount of bonds to be issued and the voters shall vote for the issuance of bonds for said purpose and levy of taxes in payment thereof, or against the issuance of bonds for said purpose and levy of taxes in payment thereof.

(b) Notice of such election, stating the time of the election, the polling place, the amount of bonds as determined by the Board to be necessary to be issued; the proposition to be voted on and the estimated cost shall be published in a newspaper in general circulation in Comanche County, Texas, once a week for two (2) consecutive weeks, the first notice not being more than twenty (20) days prior to the date of election.

(c) The Board of Directors shall name the polling place in the District and shall appoint two (2) judges, one of whom shall be presiding judge, and two (2) clerks for each voting place designated by them. The Board of Directors shall provide the necessary ballots for said election, which shall be printed.

(d) Immediately after the election the presiding judges shall make return of the result in the same manner as provided for in general elections for state and county officials. Such return shall be made to the Board of Directors who shall at a regular or special session canvass said vote, and if a majority of said votes favor the issuance of bonds and levy of taxes, the Board of Directors shall so declare and enter the results in their minutes.

(e) After declaring the result of said election, the Board of Directors shall make and enter an order in their minutes directing the issuance of bonds for such District sufficient in amount to pay for such proposed project with all necessary actual and incidental expenses connected therewith not to exceed the amount specified in said order and voted at the election.

(f) Before such bonds are offered for sale, there shall be forwarded to the Attorney General a certified copy of all proceedings had in the organization of the District, and with reference to issuance of such bonds in connection with the bonds themselves, and such other information respecting same as he may require. The Attorney General shall

carefully examine said bonds in connection with the record and Constitution and laws of the state governing the issuance of such bonds; and if such examination shows that such bonds are issued in conformity thereto, and that they are valid and binding obligations upon said District, he shall so officially certify.

(g) When said bonds are so approved, they shall be registered by the Comptroller in a book kept for that purpose and the certificate of the Attorney General as to their validity shall be preserved of record; whereupon such bonds shall be held prima facie valid in every action, suit or proceeding in which their validity may be brought into question. In every suit to enforce collection of such bonds and interest thereon, the only available defense against the validity of such bonds shall be forgery or fraud.

#### Bonds

Sec. 5. (a) After such bonds have been so registered, the Directors shall sell same on the best terms and for the best price possible, not less than their face value and accrued interest; and shall promptly pay over to the District depository the proceeds of such sale to be placed to the credit of such District.

(b) At the time of the payment of interest or for redemption of District bonds, the depository shall receive and cancel any interest coupons so paid or any bonds so discharged, and when such interest coupon or bond shall be turned over to the Board of Directors the account of such depository shall be credited with the amount thereof, and such bond or coupon shall be canceled and destroyed.

(c) When bonds have been so issued, the Board of Directors shall procure and deliver to the County Treasurer a well-bound book in which a list shall be kept of all such bonds with their manner of payment, amount, rate of interest, date of issuance, when due, where payable, amount received for same, and the tax levy to pay interest on and redeem such bonds; and such books shall at all times be open to the inspection of the parties interested, either as taxpayers or bond holders. Upon the payment of any bond, said Treasurer shall make an entry thereof in said book; and he shall receive for such services the same fees allowed by law to the County Clerk for recording deeds.

(d) Said Hospital District when it has issued bonds, may, by consent of the holders thereof, refund any bonds heretofore issued by issuing new coupon bonds for that purpose. Such refunding bonds shall not bear a greater rate of interest than the bonds in lieu of which they are issued. Interest shall be evidenced by coupons attached to such bonds, and may be payable annually or semi-annually, within the discretion of its Board of Directors; and such refunding bonds shall be payable serially, or otherwise, not exceeding forty (40) years from the date thereof, and shall be issued in denomination of One Hundred Dollars (\$100), or some multiple thereof; and a sufficient tax levy to meet the payment of the principal and interest of said refunding bonds shall be made before the delivery thereof, providing the refunding of any bonds shall not affect any taxes already due.

The refunding bonds hereby authorized shall be issued in the manner provided for the execution of fresh water supply district bonds under the laws of the State of Texas. Any sum to the credit of any sinking fund account on hand shall first be deducted in ascertaining the amount of refunding bonds to be issued, and such money shall in every case be applied to the payment of the outstanding bonds. No refunding bonds

shall be issued and delivered until approved by the Attorney General, and registered by the State Comptroller; provided, however, that the Comptroller shall not register such refunding bonds until the old bonds in lieu of which such refunding bonds are issued are presented to him for cancellation; and after the registration of the new bonds the Comptroller shall cancel the old bonds and interest coupons and deliver such new bonds to the proper party or parties; provided, further, that the old bonds may be presented for cancellation, in installments, and a like amount of the new bonds registered and delivered as is herein provided.

#### Contracts

Sec. 6. (a) Contracts for the making and construction of all improvements contemplated in this chapter, and all necessary work in connection therewith, when the cost price exceeds Ten Thousand Dollars (\$10,000) shall be let to the lowest responsible bidder, furnishing satisfactory evidence of possessing equipment and facilities essential to the proper performance of such contract; after giving notice by advertising the same in one (1) or more newspapers of general circulation in this state, once a week for four (4) weeks, and by posting a notice for at least ten (10) days at the courthouse door. Such contract shall be in writing and signed by the contractors and Directors, and a copy so executed filed with the depository subject to inspection of all interested parties.

(b) The person, firm, corporation or association to which such contract is let shall give bond to the District in such amount as the Directors may determine, not to exceed the contract price, conditioned upon the faithful performance of the obligations, agreements and covenants of such contract, and for the payment to the District of all damages sustained in default thereof. Such bond shall be approved by the Board of Directors and shall be deposited with the depository, a true copy thereof being retained in the office of the Hospital District Secretary.

(c) All contracts shall be fulfilled in accordance with the specifications and under the supervision of the Board of Directors and Hospital District agents.

#### Election Expenses

Sec. 7. If said bonds and levying of taxes are approved by the voters, all expenses incident to calling and holding all elections shall be paid out of any District funds except interest and sinking funds for bonds.

#### Eminent domain

Sec. 8. The Hospital District shall have the right and power of eminent domain for the purpose of acquiring by condemnation any and all property of any kind or character, real, personal or mixed or any interest therein, including outright ownership of such property in fee simple absolute, within the boundaries of said Hospital District necessary or convenient to the exercise of the rights, powers, privileges and functions conferred upon it by this Act, in the manner provided by General Law with respect to condemnation; provided, that the said Hospital District shall not be required to make deposits in the registry of the trial court of the sum required by Paragraph No. 2 in Article 3268, Vernon's Civil Statutes of the State of Texas, 1925, or to make the bond required therein. In condemnation proceedings being prosecuted by the said Hospital District, the Hospital District shall not be required to pay in advance or to give bond or other security for costs in trial court nor to give any bond otherwise required for the issuance of a temporary restrain-

ing order or temporary injunction relating to a condemnation proceeding, nor to give bond for costs or for supersedeas bond on any appeal or writ of error proceeding to any Court of Civil Appeals or the Supreme Court.

#### **Selection of depository**

Sec. 9. Within thirty (30) days after the appointment of the Board of Directors of the Hospital District created under this Act, the said Board shall select a depository for such District in the manner provided by law for the selection of county depositories; and such depository shall be the depository of such District for a period of two (2) years thereafter until its successor is selected and qualified.

#### **Inspection of district; records and reports**

Sec. 10. The Hospital District established or maintained under provisions of this Act shall be subject to inspection by any duly authorized representative of the State Board of Health or any State Board of Charities (or Public Welfare) that may hereafter be created, and of the Commissioners Court of the county, and resident officers shall admit such representatives into all Hospital District facilities and give them access on demand to all records, reports, books, papers, and accounts pertaining to the Hospital District.

#### **Donations, gifts and endowments**

Sec. 11. Said Board of Directors is authorized on behalf of said Hospital District to accept donations, gifts and endowments for the District, to be held in trust by the Board of Directors for such purposes and under such directions, limitations, and provisions as may be prescribed in writing by the donor, not inconsistent with proper management and objects of the District.

#### **Qualification of Voters**

Sec. 12. To be eligible to vote in any election to be held by this District to issue bonds and/or levy taxes a person must be a qualified voter under the General Election Laws of this state and a resident property taxpayer in said District who has duly rendered their property for taxation upon the tax rolls of said County Commissioners Precinct No. 4. Every person who offers to vote in any election held under the provisions of this Act shall take the following oath before the presiding judge of the polling place where he offers to vote, and such judge is authorized to administer same:

"I do solemnly swear that I am a qualified voter of Comanche County and that I am a resident property taxpayer of the District who has duly rendered my property for taxation upon the tax rolls of said County Commissioners Precinct No. 4 of Comanche County, Texas."

#### **Board of Directors**

Sec. 13. (a) No person shall be appointed or elected as a member of the Board of Directors of said Hospital District unless he is a resident thereof and owns land subject to taxation therein and unless at the time of such election he shall be more than twenty-one (21) years of age.

(b) There shall be held a general election in said District on the 1st Saturday in April next after the said District is formed at which time five (5) Directors for said District shall be elected. The three (3) Direc-

tors receiving the highest vote shall serve for two (2) years. The other two (2) Directors shall serve for one (1) year. At the second annual election two (2) Directors shall be elected to serve for two (2) years. At the third annual election three (3) Directors shall be elected to serve two (2) years and thereafter there shall be an annual election of two (2) Directors in one (1) year and three (3) Directors in the next year in continuing sequence.

(c) All vacancies in the office of Director and other offices shall be filled by appointment by the Board of Directors for the unexpired term. In the event the number of Directors shall be reduced to less than three (3) then the remaining Director or Directors shall call a special election to fill said vacancies, and if they shall fail to do so within fifteen (15) days after such vacancies occur the County Judge of Comanche County, Texas, upon petition of any voter or creditor thereof shall order the holding of such election, fixing the date thereof, and order the publication of notice thereof by any County Sheriff and name the officers to hold such election. In any such election held by order of the County Judge the returns of an election shall be made to and filed in the office of the clerk of the court and he shall declare the result thereof. The officers elected shall furnish bond and qualify in the manner provided herein with reference to Directors first appointed for said District upon its organization.

(d) The Board of Directors shall organize by electing one (1) of their number as president and one (1) of their number as secretary. Any three (3) members of the Board of Directors shall constitute a quorum and a concurrence of three (3) shall be sufficient in all matters pertaining to the business of the District.

(e) The Board of Directors shall meet at least monthly and shall hold such special meetings as they deem necessary and any taxpayer or resident or interested party may attend such meetings, but shall not participate in same without the consent of the Board of Directors and may present in an orderly manner to said Board of Directors such matters as they desire.

(f) The Board of Directors shall keep a true account of all their meetings and proceedings and shall preserve all contracts, records of notices, duplicate vouchers, duplicate receipts and all accounts and records of whatever kind in a safe place and shall be delivered to their successors in office.

(g) All vouchers for the payment of any funds of the District shall be signed by at least three (3) members of the Board of Directors.

(h) The Board of Directors shall have kept a complete book of accounts for such District, and shall on June 1st of each year select a competent auditor who shall examine the accounts, books and reports of the depository, the assessor and collector and Board of Directors, and make full report thereon, a copy of which shall be filed with the depository, and a copy with the Board of Directors, and one (1) with the county clerk. Such reports shall state for what purposes the money from each fund has been expended.

(i) The Board of Directors shall employ all necessary employees for the proper handling and operation of such District and especially may employ a general manager, attorney, bookkeeper and architect, but shall have no power to employ anyone to operate or maintain the hospital or hospitals.

(j) The Board of Directors may purchase all necessary supplies, materials and office equipment to meet the needs of the District.



(k) Before entering upon his duties each member of the Board of Directors shall take and subscribe an oath faithfully to discharge the duties of his office without favor or partiality. The oath of the members of the Board of Directors originally appointed shall be filed with the county clerk of Comanche County, Texas. All members of the Board of Directors subsequently elected shall, prior to entering upon their duties, file said oath with the secretary of said District.

(l) Each member of the Board of Directors shall give a good and sufficient bond for One Thousand Dollars (\$1,000) payable to said District conditioned upon the faithful performance of his duties.

(m) Members of the Board of Directors may be removed from office in the same manner and for the same causes as the laws of the State of Texas provide for the removal of county officials.

(n) The members of the Board of Directors shall serve without compensation but shall be reimbursed for actual expenses incurred in the performance of their duties hereunder.

#### District as governmental agency; suits; name; seal; powers

Sec. 14. (a) Said District when created shall be a governmental agency, body politic and corporate and through its Board of Directors, sue and be sued in any and all courts of this state in the name of such District and all courts of the state shall take judicial notice of the establishment of the District and said District shall contract and be contracted with in the name of such District.

(b) The name of said District shall be "DeLeon Hospital District" and shall have a seal with said name on it.

(c) Said District shall have full right and authority to contract for the purchase of land, for the hospital system, the construction of said hospital and the initial equipping of the hospital system and shall have such powers of government and with authority to exercise such rights, privileges and functions concerning the purposes for which it was created, as may be conferred by this Act or any other law in this state to the benefit of which it may be entitled. No enumeration of specific powers herein shall be held a limitation upon the general powers conferred by the Act, unless distinctly so expressed.

#### Taxes

Sec. 15. (a) The county of Comanche by its county tax assessor and collector shall assess and collect all taxes of the District in the manner in which it assesses and collects the taxes of Comanche County and turn over said taxes to the Comanche County Treasurer who shall deposit same to the credit of the District at its designated depository.

(b) The county tax assessor and collector shall receive one percent (1%) of the total taxes shown on the completed roll for assessing such taxes and one percent (1%) for collecting same; provided, however, that the compensation for the collection of delinquent taxes shall be five percent (5%) of the amount collected.

(c) All taxes which have not been paid on the last day of January shall become delinquent on the first day of February each year and same shall be and remain a lien upon the property for which same were assessed although the owner be unknown or same be listed in the name of a person not the actual owner thereof or though the ownership be changed. All such property may be sold under a judgment of a court for all taxes, interest, penalty and costs assessed against same at any

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

time after such taxes become delinquent. The District shall have authority to file suits for the collection of taxes against any and all property assessed for taxes and if the owner be unknown such suit may be filed against an unknown owner and the property sold under the judgment of the court. Taxes are not barred by any law of limitation and no law providing for a period of limitation as to debts or actions shall apply to such taxes.

**Merger with county-wide hospital district; election; notice**

Sec. 16. In the event there is ever created a Hospital District for the County of Comanche or a Hospital District created for the balance of the county not including the boundaries of this District, then the Board of Directors of this District may, at its discretion, determine to merge with said county-wide Hospital District or the District covering the balance of said county; provided, (1) that said District would assume all outstanding indebtednesses of this District; and (2) that said merger of Districts be approved by the majority of the resident qualified property taxpaying voters voting at an election who have duly rendered their property for taxation upon the rolls of County Commissioners Precinct No. 4, of Comanche County. Notice of such election would be given in the same manner as herein provided for the calling of elections for the election of the members of the Board of Directors.

**County financial aid; tax levy**

Sec. 17. The County of Comanche may render financial aid to the above Hospital District by paying a part of the expenses of operating and maintaining the system and paying a part of the debts of the District (whether assumed or created by the District) and may levy a tax not to exceed ten cents (10¢) per One Hundred Dollars (\$100) valuation (in addition to other taxes permitted by this Constitution) upon all property within the county but without the County Commissioners Precinct No. 4, of Comanche County at the time such levy is made for such purposes. If the county levies such tax the District shall by resolution assume the responsibilities, obligations, and liabilities of the county in the manner and to the extent hereinabove provided for political subdivisions having boundaries co-extensive with the District, and the county shall not thereafter levy taxes (other than herein provided) for hospital purposes nor for providing hospital care for needy individuals of the county. Acts 1959, 56th Leg., 1st C.S., p. 22, ch. 9.

Effective 90 days after June 16, 1959, date of adjournment.

Section 18 of the Act of 1959 contained a severability clause.

**Title of Act:**

An Act to authorize the creation of a Hospital District within Comanche County including only the area comprising Com-

missioners Precinct No. 4 of Comanche County, Texas; prescribing its rights, powers, privileges, and duties; authorizing financial support by Comanche County; providing a savings clause; and declaring an emergency. Acts 1959, 56th Leg., p. 22, ch. 9.

**CHAPTER SEVEN—NURSES**

**Art. 4518. Accreditation of schools of nursing and educational programs; certification of graduates; examination by Board of Nurse Examiners and requirement of registration**

Section 1. It shall be the duty of the Board of Nurse Examiners to prescribe the course of study for schools of nursing and educational

programs, which course shall include both theory and clinical practice in the care of men, women and children. All other regulations necessary to conduct accredited schools of nursing and educational programs for the preparation of professional nurses shall be as prescribed by the Board, provided, however, that the minimum period of time that the Board may require shall be at least two (2) calendar years and the maximum period of time shall not exceed four (4) calendar years. The Board shall accredit such schools of nursing and educational programs as meet its requirements and shall deny or withdraw accreditation from schools of nursing and educational programs which fail to meet the prescribed course of study or other standards.

Sec. 2. No person shall be certified as a graduate of any school of nursing or educational program unless such person has completed the requirements of the prescribed course of study, including clinical practice, of an accredited school of nursing or educational program.

Sec. 3. Every applicant for registration under this law shall present to the Board of Nurse Examiners evidence of successful completion of an accredited program of professional nursing education and a sworn application accompanied by such proof as may be required by the Board showing that the applicant is of good moral character and has such basic educational and other preliminary qualifications and requirements as the Board may prescribe, and shall upon payment of required fees be entitled to take the examination prescribed by the Board, and upon making the passing grade of seventy percent (70%) shall be entitled to receive from said Board a certificate signed by the members of said Board, attested by the seal of said Board, entitling such person to practice as a professional registered nurse in the State of Texas.

Sec. 4. Any person practicing or offering to practice professional nursing as or claiming to be a professional registered nurse in this state for compensation, shall hereafter be required to submit evidence to the Board of Nurse Examiners that he or she is qualified to practice and shall be registered as provided in this law. As amended Acts 1959, 56th Leg., p. 107, ch. 56, § 1.

Effective Sept. 1, 1959.

Section 3 of the amendatory Act of 1959 laws. Section 4 contained a severability clause. repealed all conflicting laws and parts of clause.

Art. 4518a. Repealed. Acts 1959, 56th Leg., p. 107, ch. 56, § 2. Eff. Sept. 1, 1959.

Subject matter is now covered by art. 4518.

## CHAPTER EIGHT—PHARMACY

Art. 4542a. State Board of Pharmacy to regulate practice of Pharmacy; exclusion of Communists, etc.

### Funds received, use of

Sec. 3. The fund realized from all fees payable under this Act shall first be applied to the payment of all necessary expenses of the Board, and the remainder is to be applied by order of the Board to compensate members of said Board; said compensation to each member of the Board not to exceed Twenty-five Dollars (\$25) per day, exclusive of necessary expenses in performance of his duties. Provided, however, that the premium

on any bond required of the Secretary, or any other employee of the Board, shall be paid out of said fund, as well as the expenses of any employee incurred in the performance of his duties. The State Board of Pharmacy shall defray all expenses under this law from fees provided in this Act, and the State of Texas shall never be liable for the compensation or expenses of any member of the Board, or its officers or employees, or any other expenses thereof. As amended Acts 1959, 56th Leg., p. 1068, ch. 489, § 1.

Effective 90 days after May 12, 1959,  
date of adjournment.

**Distribution of drugs or medicines, except in  
original packages, unlawful; exceptions**

Sec. 8. It shall be unlawful for any person who is not a registered pharmacist under the provisions of this Act to compound, mix, manufacture, combine, prepare, label, sell, or distribute at retail or wholesale any drugs or medicines, except in original packages. Provided that all persons now registered as pharmacists in this State shall have all the rights granted to pharmacists under this Act. Provided, however, that nothing in this Act shall apply to or interfere with any licensed practitioner of medicine, dentistry, or chiropody, who is duly registered as such by his respective State Board of Examiners of this State, who shall supply his or her patients, as a physician, dentist, or chiropodist, and by them employed as such, with such remedies as he or she may desire and who does not keep a pharmacy, open shop, or drug store, advertised or otherwise, for the retailing of medicines or poisons; and provided, further, that nothing contained in this Act shall be construed to prevent the personal administration of drugs and medicines carried by any physician, surgeon, dentist, chiropodist, or veterinarian licensed by his respective Board of Examiners of this State, in order to supply the immediate needs of his patients; nor to prevent the sale by persons, firms, joint stock companies, partnerships, or corporations, other than registered pharmacists, of patent or proprietary medicines, or remedies and medicaments generally in use and which are harmless if used according to instructions as contained upon the printed label, with the exception, however, of exempt narcotics; and insecticides and fungicides and chemicals used in the arts, when properly labeled; nor insecticides or fungicides that are mixed or compounded for purely agricultural purposes.

Provided further, this Section shall not apply to:

(1) members of the faculty of a reputable college or school of Pharmacy recognized by the Texas State Board of Pharmacy where such faculty members who are registered pharmacists, perform their services for the sole benefit of such school or college, or to

(2) senior students of a reputable college or school of Pharmacy recognized by the Texas State Board of Pharmacy who perform their services without pay in the presence and under the direct supervision of a registered pharmacist who is a member of the staff of a reputable college or school of Pharmacy recognized by the Texas State Board of Pharmacy, provided that the sale of such preparations and prescriptions so compounded by such senior students shall be restricted to duly registered students of the college or university attended by such senior students. As amended Acts 1951, 52nd Leg., p. 824, ch. 469, § 2; Acts 1953, 53rd Leg., p. 916, ch. 378, § 1; Acts 1959, 56th Leg., p. 1068, ch. 489, § 2.

Effective 90 days after May 12, 1959,  
date of adjournment.

Examinations; application; qualification; license; persons  
from other states

Sec. 9. Every person desiring to practice pharmacy in the State of Texas shall be required to pass the examination given by the State Board of Pharmacy. The applicant shall make application by presenting to the secretary of the Board, on forms furnished by the Board, satisfactory sworn evidence that he has attained the age of twenty-one (21) years, is of good moral character, is a citizen of the United States, and has at least graduated from a first grade high school, or has a preliminary education equivalent thereto, permitting matriculation in The University of Texas, and that he has attended and graduated from a reputable university, school, or college of pharmacy which meets with the requirements of the Board, and shall have had at least one thousand (1,000) hours of practical experience in a retail pharmacy under the direct supervision of a registered pharmacist as follows: the applicant shall have been actually employed substantially all of one (1) year in such capacity, provided that part time employment of not more than forty (40) hours per week gained in a maximum of eight (8) hour days may be credited toward the minimum practical experience to fulfill this requirement. If the applicant does not actually work substantially all of one (1) year in any calendar year period, the time actually worked may be added to work he may perform during the following year or years in order to fulfill one thousand (1,000) hours of practical experience. A university, school, or college of pharmacy is reputable whose entrance requirements and course of instruction are as high as those adopted by recognized universities, schools, or colleges of pharmacy, and whose course of instruction shall be the equivalent of not less than four (4) terms of eight (8) months each, and approved by the Board.

The examination shall consist of written, oral, and/or practical tests in pharmacy, chemistry, pharmaceutical jurisprudence, posology, toxicology, bacteriology, physiology, pharmacognosy, and pharmacology, and in such other subjects as may be regularly taught in all recognized universities, schools, and colleges of pharmacy.

Each applicant for license to practice pharmacy in Texas shall be given due notice of the time and place of examination. All examinations shall be conducted in writing and by such other means as the State Board of Pharmacy shall deem adequate to ascertain the qualifications of applicants, and in such manner as shall be entirely fair and impartial to all individuals in every recognized school of pharmacy. All applicants examined at the same time shall be given the same regular examinations, and each applicant successfully passing the examination and meeting all requirements of the State Board of Pharmacy shall be registered by the Board as possessing the qualifications required by this law, and shall receive from said Board a license to practice pharmacy in this State. Provided that the State Board of Pharmacy may, in its discretion, upon the payment of Fifty Dollars (\$50), grant a license to practice pharmacy to persons who furnish proof that they have been registered as such in some other state or territory, and that they are of good moral character, provided that such other Board in its examination required the same general degree of fitness required by this State, and grants the same reciprocal privileges to pharmacists of this State.

No person who is a member of the Communist Party, or who is affiliated with such party, or who believes in, supports, or is a member of any group or organization that believes in, furthers, or teaches the overthrow of the United States Government by force or by any illegal or un-

constitutional methods, shall be authorized to practice pharmacy in the State of Texas, or to receive a license to practice pharmacy in the State of Texas.

Every person admitted to practice pharmacy in the State of Texas shall, before receiving his license, make oath that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in and is neither a member of nor supports any group or organization that believes in, furthers, or teaches the overthrow of the United States Government by force or by any illegal or unconstitutional methods.

Any person who shall falsely make the affidavit prescribed in the foregoing paragraph shall be deemed guilty of fraudulent and dishonorable conduct, and malpractice, and shall be subject to all penalties which may be prescribed for making false affidavit. As amended Acts 1951, 52nd Leg., p. 824, ch. 469, § 3; Acts 1959, 56th Leg., p. 1068, ch. 489, § 3.

Effective 90 days after May 12, 1959, date of adjournment.

#### Fees, examination of books and records

Sec. 11. The State Board of Pharmacy shall charge a fee of Twenty Dollars (\$20) for examining an applicant for license, which fee must accompany the application. If an applicant who, because of failure to pass the examination, is refused a license, he shall be permitted to take a second examination without additional fee, provided the second examination is taken within a period of one (1) year. The State Auditor of the State of Texas shall, not less than once each year, examine and audit the books and records of the State Board of Pharmacy, and report his findings to the Governor of the State of Texas. As amended Acts 1959, 56th Leg., p. 1068, ch. 489, § 4.

Effective 90 days after May 12, 1959, date of adjournment.

#### Revocation or suspension of license; appeal

Sec. 12. The State Board of Pharmacy may in its discretion refuse to issue a license to any applicant, and may cancel, revoke, or suspend the operation of any license by it granted for any of the following reasons:

- (a) That said applicant is guilty of gross immorality;
- (b) That said applicant or licensee is guilty of any fraud, deceit, or misrepresentation in the practice of pharmacy or in his seeking admission to such practice;
- (c) That said applicant or licensee is unfit or incompetent by reason of negligence;
- (d) That said applicant or licensee has been convicted of a felony or a misdemeanor which involves moral turpitude;
- (e) That said applicant or licensee is an habitual drunkard or is addicted to the use of morphine, cocaine, or other drugs having similar effect, or has become insane or has been adjudged by a court of competent jurisdiction to be of unsound mind;
- (f) That said licensee, directly or indirectly, aids or abets in the practice of pharmacy any person not duly licensed to practice under this Act; provided further, that the said licensee is responsible for the legal operation of the pharmacy, dispensary, prescription laboratory or apothecary shop as long as his name appears on the permit issued for the operation of such establishments;
- (g) That said applicant or licensee has been convicted in either a State or Federal Court of the illegal use, sale, or transportation of intoxicating liquor, narcotic drugs, barbiturates, amphetamines, desoxephe-

drine, their compounds or derivatives, or any other dangerous or habit-forming drugs;

(h) That said licensee has engaged in the act of "substitution" as that term is hereinafter defined. The term "substitution" as used in this Act shall mean the dispensing of a drug or a brand of drug other than that which is ordered or prescribed without the express consent of the orderer or prescriber. If the consent of the orderer or prescriber for substitution by the licensee is obtained, a notation shall be made by the licensee on the prescription stating that such consent has been obtained and by whom such consent was given, and such notation shall, in addition, specify the drug or brand of drug so substituted;

(i) That said licensee is a member of the Communist Party or affiliated with such party.

Revocation, cancellation, or suspension of a license shall be only after ten (10) days notice and a full hearing. Any person whose license to practice pharmacy has been refused, revoked, or suspended by the Board may, within twenty (20) days after the effective date of the order, decision, or ruling of the Board, take an appeal to any of the District Courts where said applicant resided at the time the offense was committed which resulted in the Board's action refusing, revoking, or suspending said license. As amended Acts 1957, 55th Leg., p. 1324, ch. 447, § 2; Acts 1959, 56th Leg., p. 1068, ch. 489, § 5.

Effective 90 days after May 12, 1959,  
date of adjournment.

#### **Annual renewal fee; practicing without renewal certificate; duplicates**

Sec. 14. (a) On or before the first day of each year every licensed pharmacist in this State shall pay to the Secretary of the State Board of Pharmacy an annual renewal fee of Ten Dollars (\$10) for the renewal of his license to practice pharmacy for the current year. On receipt of said renewal fee, the Board shall issue an annual renewal certificate bearing the number of the license, the year for which renewed and other information for the records of the Board which said Board may deem necessary. When a pharmacist shall have failed to pay his annual renewal fee before March 1st of each year, said license shall be suspended, and such person in order to be reinstated shall be required to pay one (1) annual renewal fee as a penalty, in addition to the sum of all fees such person may be in arrears. Said renewal fee shall be due on January 1st of each year, and shall become delinquent on March 1st of each year.

(b) Practicing pharmacy without an annual renewal certificate for the current year, as provided herein, shall have the same force and effect, and be subject to all penalties of practicing pharmacy without a license.

(c) No license to practice pharmacy or annual renewal certificate issued by the Board shall be duplicated in any manner except as expressly set forth hereafter. The Board may in its discretion issue duplicate copies of either the license to practice pharmacy or the annual renewal certificate upon request from the holder of same. As amended Acts 1951, 52nd Leg., p. 824, ch. 469, § 4; Acts 1959, 56th Leg., p. 1068, ch. 489, § 6.

Effective 90 days after May 12, 1959, date  
of adjournment.

#### **Unlawful use of "Pharmacy"**

Sec. 16. It shall be unlawful for any person to display in or on any store or place of business the word "pharmacy", either in English or any foreign language, or any other word or combination of words of the same or similar meaning which would or would tend to mislead the public that

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

prescriptions could be filled in such store or place of business, unless there is continually employed therein a registered pharmacist, and unless prescriptions are, in fact, filled in such store or place of business. As amended Acts 1959, 56th Leg., p. 1068, ch. 489, § 7.

Effective 90 days after May 12, 1959,  
date of adjournment.

#### Permits for stores or factories

Sec. 17. (a) Every person, firm, joint stock company, partnership, or corporation desiring to operate a retail pharmacy, drug store, dispensary, or apothecary shop in this State, as the same is defined herein, shall procure from the State Board of Pharmacy a permit for each and every retail pharmacy, drug store, dispensary, or apothecary shop to be operated by making an application to the Board upon a form to be furnished by the Board. Such application form shall set forth under oath the ownership and location of such retail pharmacy, drug store, dispensary, or apothecary shop, the certificate number of the pharmacists registered in the State who are to be continually employed by the retail pharmacy, drug store, dispensary, or apothecary shop, and such other and further information as may be desired by the Board. No pharmacist may legally dispense medications in a pharmacy, drug store, dispensary, apothecary shop or prescription laboratory not duly licensed by the State Board of Pharmacy except as provided for in Section 17(k) hereof.

(b) Every person, firm, joint stock company, partnership, or corporation desiring to operate as a manufacturer of drugs and medicines as defined herein shall procure from the State Board of Pharmacy a permit for each and every factory to be operated by making an application to the Board upon a form to be furnished by the Board. Such application form shall set forth under oath the ownership and location of each factory, the certificate number of the pharmacists registered in the State who are continually employed by the factory, and such other and further information as may be desired by the Board.

(c) No license shall be issued under the foregoing subsections unless and until the applicant therefor has furnished satisfactory proof to the State Board of Pharmacy:

(1) That the applicant is of good moral character, or, if the applicant be an association, joint stock company, partnership, or corporation, that the managing officers are of good moral character; and

(2) That the applicant is engaged in the business described in his application.

(d) The State Board of Pharmacy may, in its discretion, refuse to issue a permit to any applicant, and may cancel, revoke, or suspend the operation of any permit by it granted under the foregoing subsections for any of the following reasons:

(1) That the applicant has been convicted of a felony or a misdemeanor which involves moral turpitude, or if the applicant be an association, joint stock company, partnership, or corporation, that a managing officer has been convicted of a felony or a misdemeanor which involves moral turpitude;

(2) That the applicant has been convicted in either a State or Federal Court of the illegal use, sale, or transportation of intoxicating liquor, narcotic drugs, barbiturates, amphetamines, desoxephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs, or if the applicant be an association, joint stock company, partnership, or corporation, that a managing officer has been convicted in either a State or Federal Court of the illegal use, sale, or transportation of intoxicating



liquor, narcotic drugs, barbiturates, amphetamines, desoxephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs;

(3) That the applicant applying for, or licensed, pursuant to Subsection (a) hereof has in any manner advertised his selling price for any drug or drugs which bear the legend: "Caution: Federal law prohibits dispensing without prescription."

(e) At any time after the issuance of a permit by the State Board of Pharmacy under the provisions of this Section, the Board may revoke, suspend, or cancel the permit when satisfactory proof has been presented to the Board that said permit holder is no longer conducting or engaged in the business described in his application. Any inspector, member, or official of the Board is hereby empowered to take charge of such permit pending final hearing before the Board, as to revocation of same.

(f) The permit provided for in Subsection (a) of this Section shall be issued annually by the Board upon receipt of proper application accompanied by a fee of Five Dollars (\$5).

(g) The permit provided for in Subsection (b) of this Section shall be issued annually by the Board upon receipt of proper application accompanied by a fee of Twenty-five Dollars (\$25).

(h) All permits issued under the provisions of this Section shall expire on May 31st of each year and must be renewed on or before June 1st of each year. Where a permit holder shall have failed to pay his annual renewal fee on or before June 1st of each year, said permit shall be suspended and such permit holder in order to be reinstated shall be required to pay one (1) annual renewal fee as a penalty, in addition to the sum of all fees such permit holder may be in arrears.

(i) Every person, firm, joint stock company, partnership, corporation, or manufacturer desiring to open a new pharmacy, drug store, dispensary, apothecary shop, or factory, shall procure the appropriate permit above mentioned before beginning its operation as such, and the same discretionary powers may be used by the Board in passing upon such applications. Not more than one (1) pharmacy, drug store, dispensary, apothecary shop, or factory may be operated under one (1) permit.

(j) In case of a change in personnel of registered pharmacists, the Board shall be notified of such change within ten (10) days; provided the same pharmacist's name shall not appear on more than one (1) permit.

(k) No provision of this Act shall be construed to apply to any hospital or clinic maintaining or operating a dispensary, apothecary shop, or prescription laboratory for the care of its patients as long as a licensed pharmacist is continuously employed to compound said prescriptions. As amended Acts 1951, 52nd Leg., p. 824, ch. 469, § 5; Acts 1957, 55th Leg., p. 1324, ch. 447, § 2; Acts 1959, 56th Leg., p. 1068, ch. 489, § 8.

Effective 90 days after May 12, 1959,  
date of adjournment.

Section 9 of the amendatory Act of 1959  
contained a severability clause.

## CHAPTER NINE—DENTISTRY

Art.

4551f. Dental technicians and laboratories; regulation of acts and services [New].

Art.

4551g. Prescription required [New].

### Art. 4551a. Persons regarded as practicing dentistry

(6). Who makes, fabricates, processes, constructs, produces, reproduces, duplicates, repairs, relines, or fixes any full or partial denture, any fixed or removable dental bridge or appliance, any dental plate or plates

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

of false teeth, any artificial dental restoration, or any substitute or corrective device or appliance for the human teeth, gums, jaws, mouth, alveolar process, or any part thereof for another, or who in any manner offers, undertakes, aids, abets, or causes another person so to do for another, without a written prescription or work-order therefor signed by the dentist legally engaged in the practice of dentistry in this state or in the jurisdiction where such dentist maintains his dental office and who prescribed and ordered same. Added Acts 1959, 56th Leg., p. 668, ch. 309, § 4.

(7). Who offers, undertakes, solicits, or advertises in any manner for himself or for another except in person or by agent to a dentist, or through the United States Mail to a dentist, or in regularly published dental publications mailed or delivered to dentists in this state or in other jurisdictions to do or perform any of the acts or services listed in any of the subsections of this Article and except to and for such dentists. Added Acts 1959, 56th Leg., p. 668, ch. 309, § 4.

Emergency. Effective May 30, 1959.

Persons regarded as practicing dentistry, see Vernon's Ann.P.C. art. 754a.

Repeal of conflicting laws and parts of laws, except Vernon's Ann.P.C. art. 753, by Acts 1959, 56th Leg., p. 668, ch. 309, § 6, see note under art. 4551f.

## Art. 4551f. Dental technicians and laboratories; regulation of acts and services

### Dental technician; definition

(1) A Dental Technician is any person who makes, assembles, fabricates, processes, constructs, creates, produces, reproduces, duplicates, repairs, relines, adjusts, or fixes, or who offers or undertakes in any manner, or who aids or abets or causes another person to offer, or undertake in any manner to make, assemble, fabricate, process, construct, create, produce, reproduce, duplicate, repair, reline, adjust, or fix any prosthetic or orthodontic dental appliance, any full or partial denture, any fixed or removable dental bridge, any dental plate of false teeth, any artificial restoration, or any substitute or corrective device for the human teeth, gums, jaws, alveolar process or any part thereof; or who offers or undertakes in any manner, or who aids or abets or causes another person to offer or undertake in any manner, to fit any such dental appliance, denture, bridge, plate, false teeth, artificial restoration, or substitute, or corrective device for the human teeth, gums, or jaws, to or on any dental model, impression, or cast of the human teeth, gums, jaws, alveolar process or any part thereof.

### Dental laboratory; definition

(2). A Dental Laboratory is any place where a person offers or undertakes to perform or accomplish any act or service listed in Section 1 of this Act.

### Necessity of work-order or prescription; requisites; filing; inspection of records

(3a). It shall be unlawful from and after the effective date of this Act for a dental technician, or for an owner, manager or employee of a dental laboratory, to accept from or deliver to any person or place, or to aid or abet any person so to do, any article, material, or thing upon or with which any act or service listed in Section 1 of this Act is, will be, or has been offered, ordered, undertaken, or performed in any manner except to or from a dentist legally engaged in the practice of dentistry in this state or in the jurisdiction where he actually maintains his dental office and engages in the practice of dentistry or to or from an employee of such

dentist for and on behalf of such dentist only and unless such dental laboratory owner, manager, or technician has been furnished with a written work-order or prescription by such dentist which work-order or prescription shall contain the (1) signature and Dental License number of such dentist; (2) the date such was signed; (3) the name and address of the patient for whom the act or service is ordered; (4) a description of the kind and type of act, service, or material ordered. Any farm-outs of the acts or services listed in Section 1 of this Act shall be accompanied by a written statement that such a prescription or work-order is on file in the laboratory originally receiving such order.

(b). It shall be the duty of each dental laboratory owner and manager to keep, for a period of two (2) years, the work-order or prescription furnished as hereinbefore required, in alphabetical order in a separate file or place at and on the premises of each such dental laboratory as a part of the records of such dental laboratory.

(c). During regular office hours the premises of each dental laboratory and all dental laboratory and dental technician records pertaining to work-orders, dentists' prescriptions, and farm-out records of each dental technician and of the owner or manager of each dental laboratory shall be open and available for inspection by the members, officers, employees, investigators, and agents of the Texas State Board of Dental Examiners for the purposes of enforcing the provisions of this Act.

#### Transportation and shipment of dental material

(4). Nothing in this Act shall prohibit those who are subject to and in compliance with the provisions of this Act from using the services of the United States Mail, Railway Express Agency, Western Union, Messengers, or common or contract carriers to accept from, handle, ship, transport, or deliver to any dentist or another dental laboratory, any article, material, or thing in any form or state of completion upon or with which any act or service listed in Section 1 of this Act is, will be, or has been offered, ordered, undertaken, or performed in any manner.

#### Exemption

(5). A dentist legally engaged in the practice of dentistry in this state who performs for himself only any of the services listed in Section 1 of this Act shall be exempt from the provisions of this Act. Added Acts 1959, 56th Leg., p. 668, ch. 309, § 1.

Emergency. Effective May 30, 1959.

Section 6 of Acts 1959, 56th Leg., p. 668, ch. 309, repealed conflicting laws and parts of laws, except Vernon's Ann.P.C. art. 753.

Section 7 of the amendatory Act of 1959 contained a severability clause.

#### Art. 4551g. Prescription required

From and after the effective date of this Act every dentist requiring the making, fabricating, processing, constructing, producing, reproducing, duplicating, repairing, relining, or fixing of any full or partial denture, any fixed or removable dental bridge or appliance, any dental plate or plates of false teeth, any artificial dental restoration or any substitute or corrective device or appliance for the human teeth, gums, jaws, mouth, alveolar process, or any part thereof, shall prepare and deliver a prescription or work-order for same directed to the person, firm, or association, or other business entity which is to perform such work or service and such work-order or prescription shall contain (1) the signature and Texas dental license number of such dentist; (2) the date such was

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

signed; (3) the name and address of the patient for whom the act or service is ordered; and (4) a description of the kind and type of act, service, or material ordered. It shall be the duty of each dentist to keep a copy of each work-order or prescription for a period of two years, and maintain a separate file therefor in his dental office which shall be available for inspection by the officers, agents, or employees of the Texas State Board of Dental Examiners. Added Acts 1959, 56th Leg., p. 668, ch. 309, § 2.

Emergency. Effective May 30, 1959.

Prescription or work-orders for dentures, see Vernon's Ann.P.C. art. 754c.

Repeal of conflicting laws and parts of laws, except Vernon's Ann.P.C. art. 753, by Acts 1959, 56th Leg., p. 668, ch. 309, § 6, see note under art. 4551f.

## CHAPTER TEN—OPTOMETRY

### Art. 4565g. Optical mechanics

Nothing in this Act shall be construed so as to prevent an ophthalmic dispenser, who does not practice medicine or optometry as defined by the laws of this State, from preparing, filling, duplicating, compounding or adapting ophthalmic prescriptions, dispensing ophthalmic lenses, products and accessories, in accordance with the specific directions of a prescription written and signed by a licensed physician or optometrist; provided, however, the fitting of contact lenses shall be done only under the direct supervision of a licensed physician or licensed optometrist as defined by the laws of this state. It shall be unlawful for any person, firm or corporation in this state to solicit patients or patronage for any individual licensed as a physician or optometrist, or for physicians or optometrists as professional groups, or to publish, cause or allow to be published any statement or advertisement concerning ophthalmic lenses, frames, eyeglasses, spectacles or parts thereof which is fraudulent, deceitful, misleading, or which in any manner whatsoever tends to create a misleading impression, including statements or advertisements of bait, discount, premiums, price, gifts or any statements or advertisements of a similar nature, import or meaning. As amended Acts 1957, 55th Leg., p. 501, ch. 240, § 1.

Emergency. Effective May 20, 1957.

## CHAPTER THIRTEEN—ANATOMICAL BOARD

Art.

4590—1. Donation and bequest of human bodies and organs [New].

### Art. 4590—1. Donation and bequest of human bodies and organs

#### Disposition by written instrument; purpose

Section 1. Any inhabitant of this State of legal age and of sound mind may by his will or by other written instrument arrange for or prescribe for the disposition to be made, after death, of his body, or any organ, member, or part thereof, provided the same is for the purpose of advancing medical science or for the replacement or rehabilitation of diseased or worn-out organs, members, or parts of the bodies of living humans.

Execution of instrument; designation of donee;  
authority of physician; liability

Sec. 2. Any such bequest, donation, authorization or consent made pursuant to Section 1 of this Act shall be by written instrument signed by the person making or giving the same and shall be witnessed by two (2) persons of legal age. Each instrument may designate the donee, but such designation shall not be necessary to its validity. A donee may be an individual, hospital, institution, or a bank maintained for the storage, preservation, and use of human bodies or the organs, members, or parts thereof. If no specific donee is named in such instrument, then the hospital in which the donor dies shall be considered to be the donee, and if such donor does not die in a hospital, then the attending physician shall be considered to be the donee; and such hospital or physician shall have full authority to take and remove said body or the organs, members, or parts thereof which such donor has designated and to make the same available to any person or institution in need thereof. Where a donee is named in such instrument, any duly licensed physician acquiring possession or custody of the body shall have the authority to remove from the body the organs, members, or parts thereof which the donor has designated and to deliver the same, or where so designated, the entire body, to the named donee. The hospital or physician shall not be liable civilly or criminally for removing said organs or any part thereof from the body, providing the donor has, prior to death, executed a valid written agreement as provided herein. No appointment of administrator, executor, or court order shall be necessary before the removal of said organs.

Revocation of disposition

Sec. 3. The donor may revoke at any time prior to death any disposition of his own body, or any organ, member, or part thereof previously made by execution of a written instrument in the same or a similar manner as the original donation and bequest.

Form of bequest or donation; intention of donor

Sec. 4. No particular form or words shall be necessary or required for the bequest, donation, or authorization as set forth in this Act, provided that the instrument conveys the clear intention of the purpose of the person making the same. Acts 1959, 56th Leg., p. 116, ch. 63.

Emergency. Effective April 8, 1959.	Traffic in dead bodies, see Vernon's Ann. P.C., art. 530.
Disposition of dead bodies without permit, see art. 4477, rule 38a.	Transportation of dead bodies, see art. 4477, rules 77 to 86.

CHAPTER SIXTEEN—BASIC SCIENCES

Article 4590c. Basic science law

Organization, officers and compensation of board

Sec. 4. The Board shall organize as soon as practicable after its appointment. It shall have authority to elect officers, to adopt a seal, and to make such rules and regulations, not inconsistent with the law, as it deems expedient to carry this Act<sup>1</sup> into effect. The Board shall keep a record of its proceedings, which shall be prima facie evidence of all matters contained therein. Each member of the Board shall take the constitutional oath of office.

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

In the discharge of duties devolved by this Act, the Board shall act through the Secretary-Treasurer. The Secretary-Treasurer shall be required to execute a bond in the sum of Ten Thousand Dollars (\$10,000.00) for the faithful performance of his duties, payable to the Texas State Board of Examiners in the Basic Sciences. The premium of such bonds shall be paid out of fees received.

Each member of the Board shall be paid Twenty-five Dollars (\$25.00) per day for each day actively engaged in the discharge of his duties, and the time spent in going to and returning from meetings of the Board shall be included in computing such time.

In addition to this per diem, each member of the Board shall be compensated for actual expenditures made while actually engaged in the performance of the duties of the Board. As amended Acts 1955, 54th Leg., p. 759, ch. 277, § 1; Acts 1959, 56th Leg., p. 631, ch. 285, § 1.

<sup>1</sup> This article and Vernon's Ann.P.C. arts. 160—a, 160—b, 742—a to 742—c, 744—a, 744—b.

Effective 90 days after May 12, 1959,  
date of adjournment.

#### Fees payable by applicants

Sec. 5. Fees for examination by the Board shall be Twenty-five Dollars (\$25.00). The fee for re-examination within a twelve-month period shall be Fifteen Dollars (\$15.00), but the fee for re-examination after the twelve-month period has expired shall be the same as the original fee. The fee for the issue of a certificate by authority of waiver of examination shall be Fifty Dollars (\$50.00). The fee for the issue of a certificate by the authority of reciprocity, in the qualification as determined by the proper agency of some other state or territory or the District of Columbia, shall be Fifty Dollars (\$50.00). All fees shall be paid to the Board by the applicant when he files his application. The Board shall pay all money received as fees into the State Treasury, where such money will be placed in a special fund to be known as "The Basic Science Examination Fund." All money so received and placed in such fund shall be used by the Board of Examiners in the Basic Sciences in paying its compensation and defraying its expenses, and in administering, enforcing and carrying out the provisions of the law, subject to the amounts appropriated in the General Appropriation Act. The Board may hire such employees as are necessary in carrying out the provisions of the law as are provided in the General Appropriation Act. The State Treasurer shall pay out of the fund the compensation of and expenses incurred by the Board on warrants based upon vouchers signed by the President and the Secretary of the Board. Such compensation and expenses shall be limited to the amounts as are appropriated in the General Appropriation Act. As amended Acts 1955, 54th Leg., p. 759, ch. 277, § 2; Acts 1959, 56th Leg., p. 632, ch. 286, § 1.

Effective 90 days after May 12, 1959,  
date of adjournment.

## TITLE 75—HUSBAND AND WIFE

## CHAPTER ONE—CELEBRATION OF MARRIAGE

Art. 4605. 4611, 2957, 2841 Consent of parent or guardian and issuance of license

(a). Any unmarried male of the age of twenty-one (21) years or upwards, or any unmarried female of the age of eighteen (18) years or upwards and not otherwise disqualified, is capable of contracting and consenting to marriage; but no female under the age of eighteen (18) years and no male under the age of twenty-one (21) years shall enter into the marriage relation, nor shall any license issue therefor, except upon the consent and authority expressly given by the parent or guardian of such underage applicant in the presence of the authority issuing such license; provided further that if the certificate of a duly licensed medical doctor or osteopath, acknowledged before an officer authorized by law to take acknowledgments and stating that such parent or guardian is unable by reason of health or incapacity to be present in person, is presented to such licensing authority, the license may issue on the written consent of such parent or guardian, acknowledged in the same manner as the accompanying medical certificate. Any such certificate and written permission shall be retained by the official issuing the marriage license, together with the returned license. Nothing herein shall be construed to effect the issuance of a marriage license in a seduction prosecution. If a minor has neither parent or guardian, then the clerk shall not issue a license without the consent of the county judge of the county of the residence of such minor, such consent to be in writing and signed and acknowledged by such county judge.

(b). The county clerk, upon application in writing signed and sworn to in person before him by both of the parties to be married setting forth their places of residence and setting forth their full names and ages as the same appear upon a certified copy of birth certificate, or upon a current motor vehicle operator's, chauffeur's, or commercial license or upon a current voter's registration certificate, or upon a current passport or visa or upon any other certificate, license or document issued by or existing pursuant to the laws of any nation or of any state or other governmental subdivision thereof, when each such document accepted as proof of identity and age is described with reasonable particularity in the application shall also set forth that such persons to be married are not disqualified or incapable of entering into the marriage relation, nor of the relationship prohibited by law, and being satisfied of the truth and sufficiency of such application and that there is no legal impediment to such marriage, and after application for such marriage license has issued, shall issue the license authorizing such marriage; provided however, that in the event the male party is under the age of twenty-one (21) years or the female party is under the age of eighteen (18) years such application shall have been on file in the County Clerk's office for a period of not less than three (3) days.

(c) Provided however, that the county judge in his discretion may waive the requirements listed in (a) and (b) above. As amended Acts 1959, 56th Leg., 2nd C.S., p. 113, ch. 20, § 1.

Effective 90 days after July 16, 1959,  
date of adjournment.

## CHAPTER THREE—RIGHTS OF MARRIED WOMEN

## Art. 4619. 4622-3 Community property

Control, management and disposition of life insurance  
or annuity contracts

Sec. 6. Notwithstanding the provisions of the foregoing Sections, during coverture the wife, without the joinder, participation or consent of the husband, shall have full control, management and disposition of any contract of life insurance or annuity heretofore or hereafter issued and to the extent provided by such contract or any assignment thereof; provided, however, that if notice in writing be furnished to the insurance company at its home office or its principal office in this State that the husband elects that this Section shall not apply to his wife, then the provisions of this Section shall not apply to any transaction by or with such wife occurring subsequent to the furnishing of such notice. Added Acts 1959, 56th Leg., p. 881, ch. 404, § 1.

Emergency. Effective May 30, 1959.

## CHAPTER FOUR—DIVORCE

Art.

4639c. Suits for custody and support of  
children after entry of foreign  
divorce decree [New].

Art. 4639c. Suits for custody and support of children after entry of  
foreign divorce decree

Section 1. When the marriage relation no longer exists as a result of divorce action in a foreign jurisdiction, in which the court granting the decree was silent as to custody and support of a child or children under eighteen (18) years of age, a suit for the custody and support of such child or children may be brought in the district court against any parent who fails to provide for the support and maintenance of his or her child or children under eighteen (18) years of age. Such suit may be brought by either parent and shall be brought in the county where the said children actually reside.

Sec. 2. Upon the filing of such suit for custody and support under the provision of this Act, citation shall issue as in other cases. Upon a hearing the court shall enter such order for support and maintenance and custody of such child or children as may seem necessary and proper. Upon change of conditions such order may be changed after application and hearing. A violation of or refusal to obey any order of the court may be punished as for contempt. Money paid under the provisions of this Act shall be paid into the district clerk's office, and disbursed under the order of the court.

Sec. 3. The provisions of this Act shall be cumulative of any provisions of law for support and custody of children now in effect. Acts 1959, 56th Leg., p. 959, ch. 447.

Emergency. Effective May 30, 1959.



## INSURANCE CODE

### CHAPTER ONE—THE BOARD, ITS POWERS AND DUTIES

#### Art. 1.04. Duties and Organization of the State Board of Insurance

Sections 6 and 7 of the amendatory Act of 1957 read as follows:

"Sec. 6. The State Board of Insurance shall not enter into any extension of lease, leases, or contracts with and shall make no expenditures of money for the purpose of housing or quarters for the Board to any individual, group of individuals, or groups connected directly or indirectly

with any insurance company, insurance agency, insurance brokerage, or insurance adjuster.

"It is expressly provided, however, that the Board shall comply with the provisions hereof not later than August 31, 1961." As amended Acts 1959, 56th Leg., 2nd C.S., p. 103, ch. 14, § 1.

Emergency. Effective July 21, 1959.

#### Art. 1.10. Duties of the Board

4. **To Calculate Re-insurance Reserve:** On the thirty-first day of December of each and every year, or as soon thereafter as may be practicable, the Board shall have calculated in its office the re-insurance reserve for all unexpired risks of all insurance companies organized under the laws of this state, or transacting business in this state, transacting any kind of insurance other than life, fire, marine, inland, lightning or tornado insurance, which calculation shall be in accordance with the provisions of Paragraph 3 hereof. As amended Acts 1959, 56th Leg., p. 637, ch. 291, § 3.

Emergency. Effective May 30, 1959.

17. (a) **Voluntary Deposits.** In the event any insurance company organized and doing business under the provisions of this Code shall be required by any other state, country or province as a requirement for permission to do an insurance business therein to make or maintain a deposit with an officer of any state, country, or province, such company, at its discretion, may voluntarily deposit with the State Treasurer such securities as may be approved by the Commissioner of Insurance to be of the type and character authorized by law to be legal investments for such company, or cash, in any amount sufficient to enable it to meet such requirements. The State Treasurer is hereby authorized and directed to receive such deposit and hold it exclusively for the protection of all policyholders or creditors of the company wherever they may be located, or for the protection of the policyholders or creditors of a particular state, country or province, as may be designated by such company at the time of making such deposit. The company may, at its option, withdraw such deposit or any part thereof, first having deposited with the Treasurer, in lieu thereof, other securities of like class and of equal amount and value to those withdrawn, which withdrawal and substitution must be approved by the Commissioner of Insurance. The proper officer of each insurance company making such deposit shall be permitted at all reasonable times to examine such securities and to detach coupons therefrom, and to collect interest thereon, under such reasonable rules and regulations as may be prescribed by the State Treasurer and the Commissioner of Insurance. Any deposit so made for the protection of policyholders or creditors of a particular state, country or province shall not be withdrawn, except by substitution as provided above, by the company, except upon filing with the Commissioner of Insurance evidence satisfactory to him that the company has withdrawn from business, and has no unsecured liabilities outstanding or

potential policyholder liabilities or obligations in such other state, country or province requiring such deposit, and upon the filing of such evidence the company may withdraw such deposit at any time upon the approval of the Commissioner of Insurance. Any deposit so made for the protection of all policyholders or creditors wherever they may be located shall not be withdrawn, except by substitution as provided above, by the company except upon filing with the Commissioner of Insurance evidence satisfactory to him that the company does not have any unsecured liabilities outstanding or potential policy liabilities or obligations anywhere, and upon filing such evidence the company may withdraw such deposit upon the approval of the Commissioner of Insurance. For the purpose of state, county and municipal taxation, the situs of any securities deposited with the State Treasurer hereunder shall be in the city and county where the principal business office of such company is fixed by its charter.

(b) Any voluntary deposit now held by the State Treasurer or State Board of Insurance heretofore made by any insurance company in this State, and which deposit was made for the purpose of gaining admission to another state, may be considered, at the option of such company, to be hereinafter held under the provisions of this Act. Added Acts 1959, 56th Leg., p. 280, ch. 157, § 1.

Emergency. Effective May 8, 1959.

Section 2 of Acts 1959, 56th Leg., p. 280, ch. 157, provided that the Act should be cumulative of all other provisions of the Insurance Code and that it should not affect other deposit requirements therein. Section 3 contained a severability clause.

#### Art. 1.14. Shall Issue Certificate of Authority

Section 1. No individual, group of individuals, association or corporation, unless now or hereafter otherwise permitted by statute, shall be permitted to engage in the business of insuring others against those losses which may be insured against under the laws of this state. Should the State Board of Insurance be satisfied that any insurance carrier applying for a certificate of authority has in all respects fully complied with the law, it shall be its duty to issue to such carrier a certificate of authority, under its seal, authorizing such carrier to transact insurance business, naming therein the particular kinds of insurance. Each such certificate of authority heretofore or hereafter issued shall be in full force and effect until it is revoked, canceled or suspended according to law; provided, however, that failure to file any annual statement required by law will subject the certificate of authority to being revoked, canceled or suspended. As amended Acts 1959, 56th Leg., p. 434, ch. 194, § 1.

Emergency. Effective May 21, 1959.

Section 2 of the amendatory Acts of 1959, 56th Leg., p. 434, ch. 194 provided: "All laws and parts of laws in conflict herewith are hereby expressly repealed, including but not limited to Articles 1.14, 3.06, 3.08, 3.57, 8.20, 9.10, 10.22, 11.02, 14.17, and 20.02, of the Insurance Code to the extent that they require periodic renewal of certificates of authority; provided, however, that nothing herein shall repeal any provision of law requiring the payment of annual license fees."

### CHAPTER TWO—INCORPORATION OF INSURANCE COMPANIES

#### Art. 2.08. Items of Capital Stock and Minimum Surplus

The capital stock and minimum surplus of any such insurance company, except any writing life, health and accident insurance shall, following incorporation and granting of certificate of authority, consist only of the following:

1. Lawful money of the United States; or

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2. Bonds of this state; or
3. Bonds or other evidences of indebtedness of the United States of America or any of its agencies when such obligations are guaranteed as to principal and interest by the United States of America; or
4. Notes secured by first mortgages upon unencumbered real estate in this state, the title to which is valid, and the payment of which notes is insured, in whole or in part, by the United States of America or any of its agencies, provided that such investments in such notes shall not exceed one-half ( $\frac{1}{2}$ ) of the capital stock and minimum surplus of the investing company; or
5. Bonds or other interest-bearing evidences of indebtedness of any counties, cities or other municipalities of this state. As amended Acts 1955, 54th Leg., p. 413, ch. 117, § 9; Acts 1959, 56th Leg., p. 250, ch. 145, § 1.

Emergency. Effective May 7, 1959.

Section 2 of the amendatory Act of 1959 laws. Section 3 contained a severability repealed all conflicting laws and parts of clause.

### **Art. 2.10. Investment of Funds in Excess of Capital and Minimum Surplus**

3. In bonds or first liens or first mortgages upon unencumbered real estate in this State or in any other state, country or province in which such company may be duly licensed to conduct an insurance business, the title to which is valid and the market value of which is not less than forty per cent (40%) more than the amount loaned thereon. If any part of the value of such real estate is in buildings, such buildings shall be insured against loss by fire for at least sixty per cent (60%) of the value thereof provided that the insurance coverage need not exceed the outstanding balance owed to the lending company when the outstanding balance falls below sixty per cent (60%) of the value of the buildings. The loss clause shall be payable to such company. The provisions of this paragraph with respect to the value of real estate compared to the amount loaned thereon shall not apply to loans secured by real estate which are insured by the Federal Housing Administrator or successors. The valuation of such real estate where the loan is not insured by the Federal Housing Administrator shall be by appraisal by two (2) or more competent and disinterested citizens of Texas appointed by the Board of Insurance Commissioners of Texas, the cost and expense of such appraisal to be paid by the insurance company to the Board. As amended Acts 1959, 56th Leg., p. 96, ch. 49, § 1.

Emergency. Effective 90 days after May 12, 1959, date of adjournment.

### **Art. 2.14. Directors Shall Choose Officers**

The directors shall choose a president from their own number, and all other officers shall be chosen in accordance with the bylaws of the company, and none of such other officers need be either a director or a stockholder except as required by the bylaws of such company. Officers shall perform such duties, receive such compensation and give such security as the bylaws may require. As amended Acts 1959, 56th Leg., p. 639, ch. 292, § 1.

Emergency. Effective May 30, 1959.

CHAPTER THREE—LIFE, HEALTH AND ACCIDENT  
INSURANCESUBCHAPTER D. POLICIES AND  
BENEFICIARIES

Art.

3.49—2. Life insurance and annuity contracts with minors over fourteen [New].

## SUBCHAPTER A. TERMS DEFINED; DOMESTIC COMPANIES

## Art. 3.04. Application, Charter and Organization

Sec. 1. As a condition precedent to the granting of a charter of any such company, the incorporators shall file with the Board of Insurance Commissioners the following:

3. An affidavit made by two (2) or more of its incorporators that all of the stock has been subscribed in good faith and fully paid for, as required by law, in the amount of not less than One Hundred Thousand Dollars (\$100,000) capital and that such company is possessed of at least One Hundred Thousand Dollars (\$100,000) surplus, as required by law, in addition to its capital; which affidavit shall state that the facts set forth in the application and the articles of incorporation are true and correct and that the capital and surplus is the bona fide property of such company. The State Board of Insurance may, in its discretion, at the expense of the incorporators, require other and additional satisfactory evidence of the matters required to be set forth in said affidavit before it shall be required to file the articles of incorporation, application for charter or follow the procedure hereinafter set forth. As amended Acts 1959, 56th Leg., p. 937, ch. 433, § 1.

Emergency. Effective May 30, 1959.

## SUBCHAPTER C. RESERVES AND INVESTMENTS

## Art. 3.28. Computation of Reserves

(1) The Board of Insurance Commissioners, as soon as practicable in each year, shall compute or cause to be computed the reserve liability on the 31st day of December of the preceding year, of every company organized under the laws of this State, or authorized to transact business in this State, which has outstanding policies of insurance on the lives or persons of citizens of this State. In making such computations the Board may use group methods and approximate averages for fractions of a year or otherwise. The reserve liability of all outstanding policies of group insurance and of policies of insurance issued by mutual companies organized under the provisions of Chapter 11 of this Code shall be computed in accordance with the laws relating specifically to such policies. The reserve liability of all other outstanding policies of insurance and annuity contracts shall be computed upon the net premium basis and in accordance with their terms and the following rules:

(a) As respects policies issued prior to the first day of January, 1910, the computation shall be on the basis of the American Experience Table of Mortality and four and one-half per cent (4½%) interest per annum.

(b) As respects policies issued after the 31st day of December, 1909, and prior to January 1, 1948, the computation shall be on the basis of the

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Actuaries' or Combined Experience Table of Mortality with four per cent (4%) interest per annum, if the interest rate guaranteed in the policy is four per cent (4%) per annum or higher. If any such policies were issued upon a reserve basis of an interest rate lower than four per cent (4%) per annum, then the computation shall be made on the basis of the American Experience Table of Mortality with interest at such lower specified rate.

(c) As respects policies issued after the 31st day of December, 1947, the computation shall be on the basis of the mortality table and interest rate specified in the respective policies, provided that (1) the specified rate of interest shall not exceed three and one-half per cent (3½%) per annum; (2) the specified table for policies other than policies of industrial life insurance shall be the American Experience Table of Mortality, the American Men Ultimate Table of Mortality, the Commissioners 1941 Standard Ordinary Mortality Table, or, as respects policies issued after the 31st day of December, 1959, the Commissioners 1958 Standard Ordinary Mortality Table; and (3) the specified table for policies of industrial life insurance shall be the American Experience Table of Mortality, the Standard Industrial Mortality Table, the Sub-Standard Industrial Mortality Table, the 1941 Standard Industrial Mortality Table, or the 1941 Sub-Standard Industrial Mortality Table.

(d) As respects policies on female risks issued after the 31st day of December, 1959, other than policies of industrial life insurance, computation shall be based on any mortality table and rate of interest permitted under the preceding paragraph (c) and specified in the respective policies, but may at the option of the company be based on an age not more than three (3) years younger than the actual age of the Insured.

(e) As respects policies issued on sub-standard risks and annuity contracts and contracts or policies for disability benefits and accidental death benefits, the computation shall be on the basis of the standards and methods adopted by the respective companies and approved by the Board of Insurance Commissioners.

(2) If the gross premium charged by any life insurance company on any policy or contract is less than the net premium for the policy or contract, according to the mortality table, rate of interest and method used in computing the reserve liability thereon as aforesaid, there shall be maintained on such policy or contract a deficiency reserve in addition to all other reserves required by law. For each such policy or contract the deficiency reserve shall be the present value, according to such standard, of an annuity, the amount of which shall equal the difference between the premium charged and such net premium required by the rules above stated and the term of which in years shall equal the number of annual premiums for the remainder of the premium paying period. Acts, 1951, Fifty-second Legislature, Chapter 491. As amended Acts 1959, 56th Leg., p. 960, ch. 448, § 1.

Emergency. Effective May 30, 1959.

Section 4 of the amendatory Act of 1959 contained a severability clause.

**Art. 3.34. Texas Securities**

The term "Texas Securities," as used in this Chapter, shall be held to include all bonds issued under and by virtue of the Federal Farm Loan Act approved July 17, 1916,<sup>1</sup> when such bonds are issued against and secured by promissory notes or other obligations, the payment of which is secured by mortgage, deed of trust, or other valid lien upon unencumbered real estate situated in this State; bonds of the State of Texas; bonds or

interest-bearing warrants of any county, city, town, school district, State educational institution, or other municipality or subdivision which is now or may hereafter be constituted or organized and authorized to issue such bonds or warrants under the Constitution and Laws of this State; notes or bonds secured by mortgage or trust deed upon real estate situated in this State and insured or guaranteed in whole or in part by the United States or any agency or instrumentality thereof, or by the State of Texas or any agency or instrumentality thereof, together with any bonds, debentures or other evidences of indebtedness of the United States or any agency or instrumentality thereof, or the State of Texas or any agency or instrumentality thereof, received and retained in whole or partial settlement of any such insurance or guarantee; the cash deposits in regularly established National or State Banks or Trust Companies in this State on the basis of average monthly balances throughout the calendar year; that percentage of a life insurance company's investments in the bonds of the United States of America that its Texas reserves are of its total reserves, but in no event in excess of the amount of bonds of the United States of America reported by said company as Texas securities in a Texas tax return covering the year 1946; promissory notes and other obligations, the payment of which is secured by a mortgage, deed of trust, or other valid lien upon unencumbered real estate situated in this State, the title to which real estate is valid and the market value of which is forty per cent (40%) more than the amount loaned thereon, exclusive of buildings unless such buildings are insured against fire and kept insured in some company authorized to transact business in the State of Texas, and the policy or policies transferred to the company taking such mortgage or lien; or upon first liens upon leasehold estates in real property and improvements situated thereon, the title to which is valid, and the leasehold has not less than thirty (30) years to run before expiration, provided that the duration of any loan upon such leasehold estates shall not exceed a period of ten (10) years. If any part of the value of such real estate is in buildings, such buildings shall be insured against loss by fire and kept insured for at least fifty per cent (50%) of the value thereof in some company authorized to transact business in this State; provided that the insurance coverage need not exceed the outstanding balance owed to the lending company when the outstanding balance falls below fifty per cent (50%) of the value of the buildings. The policy or policies shall be transferred to the company taking such mortgage or lien.

The term "Texas Securities", as used in this Chapter, shall also be held to include first lien notes or first mortgage bonds of any solvent corporation incorporated under the Laws of this State and doing business in this State, and which has paid, out of its actual earnings, dividends of an average of at least five per cent (5%) per annum on the par value of all its par value stock outstanding and on the sale value of all of its no-par value stock outstanding for a period of at least five (5) years next preceding the date of such investment, and which has not at any time defaulted in the payment of interest on any of its obligations, any such investment in the bonds of any one such corporation not to exceed five per cent (5%) of the admitted assets of the insurance company making the investment; obligations secured collaterally by the aforesaid bonds, warrants, notes, cash deposits and liens; and loans made to policyholders on the sole security of the reserve values of their policies. The investments required by this Chapter may be made by the purchase of not more than one (1) building site, and in the erection thereon of not more than one (1) office building, or in the purchase, at its reasonable market value, of such office building already constructed and the ground upon which the same is lo-

cated in any city of the State of more than four thousand (4,000) inhabitants. All real estate owned by life insurance companies in this State on December 31, 1909, and all thereafter acquired under the provisions of this Chapter, or by foreclosure of a lien thereon shall be treated, to the extent of its reasonable market value, as a part of the investment required by this Chapter. And "Texas Securities" shall be held to include every character of investment authorized by the terms of this Article; provided that the foregoing restrictions as to the value of the real estate security compared to the amount loaned thereon and as to the duration and dignity of such loans shall not be applied to loans if the entire amount of the indebtedness is insured or guaranteed in any manner by the United States, or by the State of Texas or by any agency or instrumentality of either of them, or if not wholly so insured or guaranteed, the difference between the entire amount of the indebtedness and that portion thereof insured or guaranteed by the United States, or by the State of Texas or by any agency or instrumentality of either of them would not exceed the amount of loan permissible under the said restrictions.

The term "Texas Securities" shall also include insured accounts and evidences of indebtedness as defined and limited by Section 1, Chapter 618, page 1356, Acts of the Forty-seventh Legislature,<sup>2</sup> and Chapter 534, page 966, Acts 1949, Fifty-first Legislature.<sup>3</sup>

The term "Texas Securities", as used in this Chapter, shall also be held to include such debentures, preferred stock and common stock of any

(a) solvent electric public utility corporation, incorporated under the laws of and doing business in this State, which derives at least eighty-five per cent (85%) of its gross income from the sale of electricity; or

(b) other corporation, incorporated under the laws of and doing business in this State, the principal assets of which are the common stock of subsidiaries which are solvent electric public utility corporations from which it derives at least eighty-five per cent (85%) of its gross income, as are authorized investments under the provisions of Article 3.39 and 3.41, respectively, of the Insurance Code of the State of Texas. As amended Acts 1953, 53rd Leg., p. 403, ch. 115, § 1; Acts 1959, 56th Leg., p. 96, ch. 49, § 2.

<sup>1</sup> 12 U.S.C.A. § 641 et seq.

<sup>2</sup> Vernon's Ann.Civ.St. art. 842a.

<sup>3</sup> Vernon's Ann.Civ.St. art. 881a—24.

Effective 90 days after May 12, 1959,  
date of adjournment.

*Amendment by Acts 1959, 56th Leg., p. 626, ch. 282, § 2, see art.*

*3.34 post.*

### **Art. 3.34. Texas Securities**

The term "Texas Securities," as used in this Chapter, shall be held to include all bonds issued under and by virtue of the Federal Farm Loan Act approved July 17, 1916,<sup>1</sup> when such bonds are issued against and secured by promissory notes or other obligations, the payment of which is secured by mortgage, deed of trust, or other valid lien upon unencumbered real estate situated in this state; bonds of the State of Texas; bonds or interest-bearing warrants of any county, city, town, school district, state educational institution, or other municipality or subdivision which is now or may hereafter be constituted or organized and authorized to issue such bonds or warrants under the Constitution and laws of this state; notes or bonds secured by mortgage or trust deed upon real estate situated in this state and insured or guaranteed in whole or in part by the United States or any agency or instrumentality thereof, or by the State of Texas or any agency or instrumentality thereof, together with any bonds, de-

ventures or other evidences of indebtedness of the United States or any agency or instrumentality thereof, or the State of Texas or any agency or instrumentality thereof, received and retained in whole or partial settlement of any such insurance or guarantee; the cash deposits in regularly established national or state banks or trust companies in this state on the basis of average monthly balances throughout the calendar year; that percentage of a life insurance company's investments in the bonds of the United States of America; that its Texas reserves are of its total reserves, but in no event in excess of the amount of bonds of the United States of America, reported by said company as Texas securities in a Texas tax return covering the year 1946; promissory notes and other obligations, the payment of which is secured by a mortgage, deed of trust, or other valid lien upon unencumbered real estate situated in this state, the title to which real estate is valid and the market value of which is at least one-third more than the amount loaned thereon, exclusive of buildings unless such buildings are insured against fire and kept insured in some company authorized to transact business in the State of Texas, and the policy or policies transferred to the company taking such mortgage or lien; or upon first liens upon leasehold estates in real property and improvements situated thereon, the title to which is valid, and the leasehold has not less than thirty (30) years to run before expiration, provided that the duration of any loan upon such leasehold estates shall not exceed a period of ten (10) years. If any part of the value of such real estate is in buildings, such buildings shall be insured against fire and kept insured for at least fifty percent (50%) of the value thereof in some company authorized to transact business in this state; provided that the insurance coverage need not exceed the outstanding balance owed to the lending company when the outstanding balance falls below fifty percent (50%) of the value of the buildings. The policy or policies shall be transferred to the company taking such mortgage or lien.

The term "Texas Securities," as used in this Chapter, shall also be held to include first lien notes or first mortgage bonds of any solvent corporation incorporated under the laws of this state and doing business in this state, and which has paid, out of its actual earnings, dividends of an average of at least five percent (5%) per annum on the par value of all its par value stock outstanding and on the sale value of all of its no-par value stock outstanding for a period of at least five (5) years next preceding the date of such investment, and which has not at any time defaulted in the payment of interest on any of its obligations, any such investment in the bonds of any one such corporation not to exceed five percent (5%) of the admitted assets of the insurance company making the investment; obligations secured collaterally by the aforesaid bonds, warrants, notes, cash deposits and liens; and loans made to policyholders on the sole security of the reserve values of their policies. The investments required by this Chapter may be made by the purchase of not more than one building site, and in the erection thereon of not more than one office building, or in the purchase, at its reasonable market value, of such office building already constructed and the ground upon which the same is located in any city of the state of more than four thousand (4,000) inhabitants. All real estate owned by life insurance companies in this state on December 31, 1909, and all thereafter acquired under the provisions of this Chapter, or by foreclosure of a lien thereon shall be treated, to the extent of its reasonable market value, as a part of the investment required by this Chapter. And "Texas Securities" shall be held to include every character of investment authorized by the terms of this Article; provided that the foregoing restrictions as to the value of the real estate security compared to the amount loaned thereon and as to the duration and dig-



nity of such loans shall not be applied to loans if the entire amount of the indebtedness is insured or guaranteed in any manner by the United States, or by the State of Texas or by any agency or instrumentality of either of them, or if not wholly so insured or guaranteed, the difference between the entire amount of the indebtedness and that portion thereof insured or guaranteed by the United States, or by the State of Texas or by any agency or instrumentality of either of them would not exceed the amount of loan permissible under the said restrictions.

The term "Texas Securities" shall also include insured accounts and evidences of indebtedness as defined and limited by Section 1, Chapter 618, page 1356, Acts of the 47th Legislature,<sup>2</sup> and Chapter 534, page 966, Acts 1949, 51st Legislature.<sup>3</sup>

The term "Texas Securities," as used in this Chapter, shall also be held to include such debentures, preferred stock and common stock of any (a) solvent electric public utility corporation, incorporated under the laws of and doing business in this state, which derives at least eighty-five percent (85%) of its gross income from the sale of electricity; or (b) other corporation, incorporated under the laws of and doing business in this state, the principal assets of which are the common stock of subsidiaries which are solvent electric public utility corporations from which it derives at least eighty-five percent (85%) of its gross income, as are authorized investments under the provisions of Articles 3.39 and 3.41, respectively, of the Insurance Code of the State of Texas. As amended Acts 1953, 53rd Leg., p. 403, ch. 115, § 1; Acts 1959, 56th Leg., p. 626, ch. 282, § 2.

<sup>1</sup> 12 U.S.C.A. § 641 et seq.

<sup>2</sup> Vernon's Ann.Civ.St. art. 842a.

<sup>3</sup> Vernon's Ann.Civ.St. art. 881a—24.

*Amendment by Acts 1959, 56th Leg., p. 96, ch. 49, § 2, see art. 3.34 ante.*

Emergency. Effective May 29, 1959.

Section 3 of the amendatory Act of 1959, repealed conflicting laws and parts of laws. Section 4 provided that partial unconstitutionality should not affect the validity of the remaining portions of the Act.

Section 2 of the amendatory Act of 1953 repealed conflicting laws and parts of laws to the extent of the conflict, and provided that partial invalidity should not impair any remaining sections or provisions of the Act.

**Art. 3.39. Authorized Investments for "Domestic" Companies**

1. It may invest any of its funds and accumulations in the bonds, treasury bills, notes and certificates of indebtedness of the United States or any other obligation or security fully guaranteed as to principal and interest by the full faith and credit of the United States; or in the bonds of the Dominion of Canada, or of any state, county, or city of the United States, or any province or city of the Dominion of Canada; or in any bonds, or interest-bearing warrants issued by authority of law by any county, city, town, school district, or other municipality or subdivision or by any educational institution of the State of Texas which is now or hereafter may be constituted or organized under the laws of this State; and is authorized to issue such bonds and warrants under the Constitution and laws of this State, provided legal provision has been made by a tax to meet said obligations; or in the bonds and warrants, including revenue and special obligations, of any educational institution of the State of Texas; or any municipally owned water system or sewer system when special revenues, or income to meet the principal and interest payments as they accrue upon such obligations shall have been appropriated, pledged or otherwise provided by such municipality or educational institution; or in any paving certificates issued by any city in the State of

Texas and secured by a first lien on real estate; or in bonds issued under and by virtue of the Federal Farm Loan Act approved July 17, 1916,<sup>1</sup> when such bonds are issued against and secured by promissory notes or obligations, the payment of which is secured by mortgage, deed of trust or other valid lien upon unencumbered real estate situated in this State; or in first mortgage bonds on real or personal property of any solvent corporation which has not defaulted in the payment of any debt within five (5) years next preceding such investment; or of any solvent corporation which has not been in existence for five (5) consecutive years next preceding such investment, provided such corporation has succeeded to the business and assets and has assumed the liabilities of another corporation, and which corporation and the corporation so succeeded have not defaulted in the payment of any debt within five (5) years next preceding such investment; or in the debentures of any such corporation with a capital stock of not less than Five Million Dollars (\$5,000,000) where no prior lien exists, or, under the provisions of the indenture providing for the issuance of such debentures, can be created against the real or personal property owned by such corporation at the time the debentures were issued; but in no event shall the amount of such investment in the bonds or debentures of any one such corporation exceed five per cent (5%) of the admitted assets of the insurance company making the investment; together with such other investments as are now or may hereafter be specifically authorized by law.

Any company legally authorized to transact business in a foreign country may invest in the same kinds of securities of said country as hereinbefore authorized in the United States of America for an aggregate amount not exceeding the reserve on the business in force in said country. As amended Acts 1959, 56th Leg., p. 890, ch. 411, § 1.

<sup>1</sup> 39 Stat. 360, 12 U.S.C.A. § 641 et seq.

Effective 90 days after May 12, 1959,  
date of adjournment.

2. It may loan any of its funds and accumulations, taking as security therefor such collateral as under the previous subdivision it may invest in. It may also make loans upon first liens upon real estate, the title to which is valid and the value of which is forty per cent (40%) more than the amount loaned thereon, or upon first liens upon leasehold estates in real property and improvements, situated thereon, the title to which is valid, and the leasehold has not less than thirty (30) years to run before expiration; provided that the duration of any loan upon such leasehold estates shall not exceed a period of ten (10) years; or upon any obligation secured collaterally by any such first liens. If any part of the value of such real estate is in buildings, such buildings shall be insured against loss by fire for at least fifty per cent (50%) of the value thereof; provided that the insurance coverage need not exceed the outstanding balance owed to the lending company when the outstanding balance falls below fifty per cent (50%) of the value of the buildings. The loss clause shall be payable to such company. It may also make loans upon the security of or purchase of its own policies. No loan on any policy shall exceed the reserve values thereof. No investment or loan, except policy loans, shall be made by any such insurance company, unless the same shall first have been authorized by the Board of Directors or by a committee charged with the duty of supervising such investments or loans. No such company shall subscribe to, or participate in, any underwriting of the purchase or sale of securities or property or enter into any such transaction for such

purpose, or sell on account of such company jointly with any other person, firm or corporation; nor shall any such company enter into any agreement to withhold from sale any of its property, but the disposition of its property shall be at all times within the control of its Board of Directors; provided that the foregoing restrictions as to the value of the real estate security compared to the amount loaned thereon and as to the duration of such loans shall not be applied to loans if the entire amount of the indebtedness is insured or guaranteed in any manner by the United States, or by the State of Texas, or, if not wholly insured or guaranteed, the difference between the entire amount of the indebtedness and that portion thereof insured or guaranteed by the United States, or by the State of Texas, would not exceed the amount of loan permissible under the said restrictions. As amended Acts 1959, 56th Leg., p. 96, ch. 49, § 3.

Effective 90 days after May 12, 1959,  
date of adjournment.

*Amendment by Acts 1959, 56th Leg., p. 626, ch. 282, § 1, see subd. 2, post.*

*Amendment by Acts 1959, 56th Leg., p. 890, ch. 411, § 2, see subd. 2, post.*

2. It may loan any of its funds and accumulations, taking as security therefor such collateral as under the previous subdivision it may invest in. It may also make loans upon first liens upon real estate, the title to which is valid and the value of which is at least one-third more than the amount loaned thereon, or upon first liens upon leasehold estates in real property and improvements, situated thereon, the title to which is valid, and the leasehold has not less than thirty (30) years to run before expiration; provided that the duration of any loan upon such leasehold estates shall not exceed a period of ten (10) years; or upon any obligation secured collaterally by any such first liens. If any part of the value of such real estate is in buildings, such buildings shall be insured against loss by fire for at least fifty percent (50%) of the value thereof; provided that the insurance coverage need not exceed the outstanding balance owed to the lending company when the outstanding balance falls below fifty percent (50%) of the value of the buildings. The loss clause shall be payable to such company. It may also make loans upon the security of or purchase of its own policies. No loan on any policy shall exceed the reserve values thereof. No investment or loan, except policy loans, shall be made by any such insurance company, unless the same shall first have been authorized by the Board of Directors or by a committee charged with the duty of supervising such investments or loans. No such company shall subscribe to, or participate in, any underwriting of the purchase or sale of securities or property or enter into any such transaction for such purpose, or sell on account of such company jointly with any other person, firm or corporation; nor shall any such company enter into any agreement to withhold from sale any of its property, but the disposition of its property shall be at all times within the control of its Board of Directors; provided that the foregoing restrictions as to the value of the real estate security compared to the amount loaned thereon and as to the duration of such loans shall not be applied to loans if the entire amount of the indebtedness is insured or guaranteed in any manner by the United States, or by the State of Texas, or, if not wholly insured or guaranteed, the difference between the entire amount of the indebtedness and that portion thereof insured or guaranteed by the United States, or by the State of

Texas, would not exceed the amount of loan permissible under the said restrictions. As amended Acts 1959, 56th Leg., p. 626, ch. 282, § 1.

Emergency. Effective May 29, 1959.

*Amendment by Acts 1959, 56th Leg., p. 96, ch. 49, § 3, see subd. 2, ante.*

*Amendment by Acts 1959, 56th Leg., p. 890, ch. 411, § 2, see subd. 2, post.*

2. It may loan any of its funds and accumulations, taking as security therefor such collateral as under the previous subdivision it may invest in. It may also make loans upon first liens upon real estate, the title to which is valid and the value of which is at least one-third ( $\frac{1}{3}$ ) more than the amount loaned thereon, or upon first liens upon leasehold estates in real property and improvements, situated thereon, the title to which is valid; provided that the duration of any loan upon such leasehold estates shall not exceed a period equal to four-fifths ( $\frac{4}{5}$ ) of the then unexpired term of such leasehold estate, provided the unexpired term of the leasehold estate must extend at least ten (10) years beyond the term of the loan, and any such loan shall be payable only in equal monthly, quarterly, semi-annual or annual installments, on principal or principal and interest during a period not exceeding four-fifths ( $\frac{4}{5}$ ) of the then unexpired term of such leasehold estate; or upon any obligation secured collaterally by any such first liens. If any part of the value of buildings is required to be included in the value of such real estate to attain the minimum authorized value of the security, such buildings shall be insured against loss by fire in a company authorized to transact business in the State of Texas for at least fifty per cent (50%) of the value thereof; provided, that the insurance coverage need not exceed the outstanding balance owed to the lending company when the outstanding balance falls below fifty per cent (50%) of the value of the buildings. The loss clause shall be payable to such company. It may also make loans upon the security of or purchase of its own policies. No loan on any policy shall exceed the reserve values thereof. No investment or loan, except policy loans, shall be made by any such insurance company, unless the same shall first have been authorized by the Board of Directors or by a committee charged with the duty of supervising such investments or loans. No such company shall subscribe to, or participate in, any underwriting of the purchase or sale of securities or property or enter into any such transaction for such purpose, or sell on account of such company jointly with any other person, firm or corporation; nor shall any such company enter into any agreement to withhold from sale any of its property, but the disposition of its property shall be at all times within the control of its Board of Directors; provided that the foregoing restrictions as to the value of the real estate security compared to the amount loaned thereon and as to the duration of such loans shall not be applied to loans if the entire amount of the indebtedness is insured or guaranteed in any manner by the United States, the Federal Housing Administration pursuant to the National Housing Act of 1934 as amended,<sup>1</sup> or by the State of Texas, or, if not wholly insured or guaranteed, the difference between the entire amount of the indebtedness and that portion thereof insured or guaranteed by the United States, the Federal Housing Administration pursuant to the National Housing Act of 1934 as amended, or by the State of Texas,

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would not exceed the amount of loan permissible under the said restrictions. As amended Acts 1959, 56th Leg., p. 890, ch. 411, § 2.

<sup>1</sup>12 U.S.C.A. § 1701 et seq.

Effective 90 days after May 12, 1959,  
date of adjournment.

*Amendment by Acts 1959, 56th Leg., p. 96, ch. 49, § 3, see subd. 2, ante.*

*Amendment by Acts 1959, 56th Leg., p. 626, ch. 282, § 1, see subd. 2, ante.*

6. It may invest any of its funds and accumulations in shares or share accounts of Building and Loan Associations and Savings and Loan Associations doing business in this State, where such shares are insured under and by virtue of the Federal Savings and Loan Insurance Corporation; and in the stock of banks, either State or National, that are members of the Federal Deposit Insurance Corporation. No such investment shall exceed twenty per cent (20%) of the total outstanding shares of any such individual Building and Loan Association, Savings and Loan Association, or stock of such bank. The investment powers conferred by this Section 6 are in addition to those conferred by Section 4 of this Article and are not to be construed as restricting the powers already granted by said Section 4, and this Section 6 and the powers conferred herein are cumulative with respect to the said Section 4 and the powers conferred therein. As amended Acts 1959, 56th Leg., p. 54, ch. 29, § 1.

Emergency. Effective March 17, 1959.

10. Any such company may also invest or loan its funds and accumulations in or upon any other securities, provided such securities are approved by the State Board of Insurance as being substantially of equal grade and quality as those hereinbefore specified; and provided further that in no event shall the aggregate amount of any such investments under this Subdivision exceed the lesser of the following:

(a) Five per cent (5%) of the admitted assets of the insurance company making the investment; or

(b) The total value of such company's surplus and contingency funds over and above its policy reserves. As amended Acts 1959, 56th Leg., p. 890, ch. 411, § 3.

Effective 90 days after May 12, 1959  
date of adjournment.

Section 5 of the amendatory Act of 1959 repealed all conflicting laws and parts of laws to the extent of such conflict. Section 6 contained a severability clause.

### Art. 3.40. May Hold Real Estate

Every such insurance company may secure, hold and convey real property only for the following purposes and in the following manner:

1(a). One building site and office building for its accommodation in the transaction of its business and for lease and rental; and such office building may be on ground on which the company owns a lease having not less than fifty (50) years to run from the date of its acquisition by the company, provided that the company shall own, or be entitled to the use of, all the improvements thereon, and that the value of such improvements shall at least equal the value of the ground, and shall be not less than twenty (20) times the annual average ground rentals payable under such lease; and provided such office building shall have an annual average net rental of at least twice such annual ground rental; and provided further, that such company shall be liable for and shall pay all State and local taxes levied and assessed against such ground and

the improvements thereon, which for the purposes of taxation shall be deemed real estate owned by the company. Provided that an acquisition of such an office building on leased ground shall be approved by the State Board of Insurance before such investment.

Branch office buildings in the State of Texas and elsewhere within the United States wherein such company is authorized to do business as shall be requisite for its convenient accommodation in the transaction of its business and for lease and rental and also parking facilities adjacent to or in the vicinity of each office building owned by such insurance company as shall be reasonably requisite for such insurance company and tenants of the buildings; however, at least fifty per cent (50%) of the space in each such branch office building which is available for occupancy for business purposes shall be used by such insurance company for the transaction of its business and not for lease and rental to others; provided, however, that such investments in the properties described in this paragraph shall only be made in towns or cities having a population of fifteen thousand (15,000) or more according to the last Federal Census.

1(b). No such company shall make any investment in the properties described in Subdivision 1(a) above if, after making such investment, the total investment of the company in such properties is in excess of thirty-three and one-third per cent ( $33\frac{1}{3}\%$ ) of its admitted assets as of December 31st next preceding the date of such investment; provided, however, that such investment may be increased to as much as fifty per cent (50%) of the company's admitted assets upon advance approval by the State Board of Insurance; provided further, that such investment may be further increased if the amount of such additional increase is paid for only from surplus funds and is not included as an admitted asset of the company.

1(c). The value of each such investment in the properties described in Subdivision 1(a) shall be subject to the approval by the State Board of Insurance; and the Board may, in its discretion, at the time such investment is made or any time when an examination of the company is being made, cause any such investment to be appraised by an appraiser appointed or approved by the Board, and the reasonable expense of such appraisal shall be paid by such insurance company and shall be deemed to be a part of the expense of examination of such company. No such insurance company may hereafter make any increase in the valuation of any of the properties described in Subdivision 1(a) unless and until such increased valuation shall be likewise approved by the Board, subject to the limitations and conditions set out in Subdivision 1(b);

2. Such as have been acquired in good faith by way of security for loans previously contracted or for moneys due;

3. Such as have been conveyed to it in the satisfaction of debts previously contracted in the course of its dealings;

4. Such as have been purchased at sales under judgment or decrees of court, or mortgage or other liens held by such companies.

All such real property specified in Subdivisions 2, 3 and 4 of this Article which shall not be necessary for its accommodation in the convenient transaction of its business, except interests in producing minerals or producing royalty acquired prior to April 1, 1959, shall be sold and disposed of within five (5) years after the company shall have acquired title to the same, or within five (5) years after the same shall have ceased to be necessary for the accommodation of its business. It shall not hold such property for a longer period, unless it shall procure a certificate from the Board that its interest will suffer materially by

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the forced sale thereof; in which event the time for the sale may be extended to such time as the Board shall direct in such certificate. As amended Acts 1955, 54th Leg., p. 916, ch. 363, § 13; Acts 1959, 56th Leg., p. 890, ch. 411, § 4.

Effective 90 days after May 12, 1959,  
date of adjournment.

## SUBCHAPTER D. POLICIES AND BENEFICIARIES

## Art. 3.44. Policies Shall Contain Certain Provisions

7. A provision which, in the event of default in the premium payments after premiums shall have been paid for three (3) full years, shall secure a stipulated form of insurance on the life of the Insured, the net value of which shall be equal to the reserve (exclusive of any reserve for disability or accidental death benefits) at the date of default on the policy, and on any dividend additions thereto, according to the mortality table, rate of interest and method adopted for computing such reserve, less a sum of not more than two and one-half per cent (2½%) of the amount insured by the policy and of any existing dividend additions thereto, and less any existing indebtedness to the company on the policy; provided, however, that if the mortality table adopted for computing such reserve is either the American Men Ultimate Table of Mortality or the Commissioners 1941 Standard Ordinary Mortality Table, then in calculating the value of paid-up term insurance with accompanying pure endowment, if any, a rate of mortality may be assumed which is not more than one hundred thirty per cent (130%) of the rate of mortality according to such adopted table or, in case of sub-standard policies, the adopted multiple thereof; provided, further, that if the mortality table adopted for computing such reserve is the Commissioners 1958 Standard Ordinary Mortality Table, then in calculating the value of paid-up term insurance with accompanying pure endowment, if any, a rate of mortality may be assumed which is not more than that shown in the Commissioners 1958 Extended Term Insurance Table, or, in case of sub-standard policies, the adopted multiple thereof; and provided further as respects policies on female risks, other than policies of industrial insurance, the net value of any such stipulated form of insurance may be calculated according to an age not more than three (3) years younger than the actual age of the Insured, provided the same age differential has been used in computing the policy reserves under such policies. The policy shall state: (1) the amount and term of the stipulated form of insurance calculated upon the assumption of no indebtedness on the policy and no dividend additions thereto; and (2) the method, rate of interest, and mortality table (including any age differential applicable in making such computations on policies issued to female risks) for computing the policy reserve, which must be such as may be authorized by law for use in computing the reserve liability of the company on such policy. Such provision shall also stipulate that the policy may be surrendered to the company at its home office within one month from the due date of any premium for its cash value, which shall be specified in the policy and which shall be at least equal to the sum which would otherwise be available for the purchase of insurance, as aforesaid, but not more than the reserve on the policy, and may stipulate that the company may defer payment for not more than six (6) months after application therefor is made. This provision shall not be required in term insurance. As amended Acts 1959, 56th Leg., p. 960, ch. 448, § 2:

Emergency. Effective May 30, 1959.

Art. 3.49—2. Life insurance and annuity contracts with minors over fourteen

A minor not less than fourteen (14) years of age and without a guardian of his estate may, notwithstanding such minority, contract for or otherwise acquire policies of life, term or endowment insurance, or annuity contracts, or both, and may exercise all rights and powers with respect to or under such policies or contracts heretofore or hereafter issued as though of full legal age, and may surrender his interests therein and give a valid discharge for any benefit or money payable thereunder, and such minor shall not, by reason of his minority, be entitled to rescind, avoid or repudiate the contract, or the exercise of any right or privilege or the receipt of any benefit or payment thereunder, subject, however, to the following conditions and limitations:

(a) This Act applies only to policies and contracts issued by a stock or mutual legal reserve life insurance company that maintains the full legal reserve required under the laws of this State, and that is licensed by the State Board of Insurance to transact the business of life insurance in this State.

(b) The policies of insurance subject to this Act shall be only those policies owned by the minor and insuring the life of the minor, his father, mother, spouse, child, brother, sister, grandfather, grandmother or a person in whose life the minor may have an insurable interest.

(c) The minor shall be the annuitant of any such annuity contract during his life.

(d) The minor, his estate, father, mother, spouse, child, brother, sister, grandfather, or grandmother shall be the beneficiary or beneficiaries of any such policies and of the death benefit of any such annuity contracts.

(e) Nothing contained in this Act shall be deemed to alter, amend or modify any provision of any policy or contract.

(f) During the time in which any such minor is not less than fourteen (14) years of age his applications for such policies and contracts and all agreements with respect to same, or the rights, privileges, and benefits thereunder, may be made by the minor and shall also be signed or approved in writing by either his father, mother, grandfather, grandmother or adult brother or sister, or if there be none of the foregoing, then by an adult person eligible under the Texas Probate Code to be appointed guardian of the estate of such minor.

(g) If notice in writing be furnished by the father or mother of any such minor to the insurance company at its home office or its principal office in this State that they or either of them elect that this Act shall not apply to their specified minor child, then the provisions of this Act shall not apply to any transaction by or with any such specified minor child occurring subsequent to the receipt of such notice. Acts 1959, 56th Leg., p. 912, ch. 417, § 1.

Effective 90 days after May 12, 1959,  
date of adjournment.

*Article 3.49—2 was not enacted as part of the Insurance Code of 1951.*



SUBCHAPTER E. GROUP INDUSTRIAL AND CREDIT INSURANCE

**Art. 3.50. Group Life Insurance**

**Sec. 1. Definitions.**

(1).

(d) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or by the employer or trustees. No policy may be issued which provides insurance on any employee which together with any other insurance under any group life insurance policies issued to the employer or to the trustees of a fund established by the employer exceeds Twenty Thousand Dollars (\$20,000.00), unless one hundred and fifty per cent (150%) of the annual compensation of such employee from his employer or employers exceeds Twenty Thousand Dollars (\$20,000.00), in which event all such term insurance shall not exceed Forty Thousand Dollars (\$40,000.00), or one hundred and fifty per cent (150%) of such annual compensation, whichever is the lesser, except that this limitation shall not apply to group insurance on other than the term plan where such insurance is to be used to fund the benefits under a pension plan and the amount of such insurance does not exceed that required to provide at normal retirement date the pension specified by the plan, and except that a group policy which is issued by the same or another carrier to replace another group policy may provide term insurance not to exceed the amounts provided by the policy which it replaces, or the amounts provided above, whichever are greater. As amended Acts 1955, 54th Leg., p. 504, ch. 146, § 1; Acts 1959, 56th Leg., p. 199, ch. 112, § 1.

Emergency. Effective April 29, 1959.

(4) A policy issued to a creditor, who shall be deemed the policyholder, to insure debtors of the creditor, subject to the following requirements:

(a) The debtors eligible for insurance under the policy shall all be members of a group of persons numbering not less than fifty (50) at all times, who became borrowers, or purchasers of securities, merchandise or other property under agreement to repay the sum borrowed or to pay the balance of the price of the securities, merchandise or other property, purchased to the extent of their respective indebtedness, or the face amount of any loan or loan commitment, totally or partially executed, made to a debtor with seasonal income by a creditor in good faith for general agricultural or horticultural purposes, secured or unsecured, where the debtor becomes personally liable for the payment of such loan, but not to exceed Ten Thousand Dollars (\$10,000.00) on any one life.

(b) The premium for the policy shall be paid by the policyholder, either from the creditor's funds or from charges collected from the insured debtors, or both.

(c) The insurance issued shall not include annuities or endowment insurance.

(d) The insurance shall be payable to the policyholder. Such payment shall reduce or extinguish the unpaid indebtedness of the debtor to the extent of such payment; provided that in the case of a debtor with seasonal income, under a loan or loan commitment for general agricultural or horticultural purposes of the type described in paragraph (a), the insurance in excess of the indebtedness to the creditor, if any shall be payable to the estate of the debtor or under the provision of a facility of

payment clause. As amended Acts 1955, 54th Leg., p. 686, ch. 247, § 1; Acts 1959, 56th Leg., p. 812, ch. 369, § 1.

Emergency. Effective June 1, 1959.

### Art. 3.51. Group Insurance for Employees of State and Its Subdivisions and College and School Employees

Hospitalization insurance for county officials and employees, see Vernon's Ann. Civ.St. art. 2372h-2.

## CHAPTER SIX—FIRE AND MARINE COMPANIES

### Art. 6.01. Board Shall Calculate Reserve on Fire Insurance

(1) Every company doing fire insurance business in this state shall maintain a re-insurance or unearned premium reserve on all policies in force.

(2) The Board may require that such reserves shall be equal to the unearned portions of the gross premiums in force after deducting re-insurance in accordance with the provisions of Article 6.16 of the Texas Insurance Code as computed on each respective risk from the policy's date of issue. If the Board does not so require, the portions of the gross premium in force, less re-insurance in accordance with the provisions of Article 6.16 of the Texas Insurance Code, to be held as a re-insurance or unearned premium reserve, shall be computed according to the following table:

Term for Which Policy Was Written	Reserve for Unearned Premium	
1 year or less		1/2
2 years	1st year	3/4
	2nd year	1/4
3 years	1st year	5/6
	2nd year	1/2
	3rd year	1/6
4 years	1st year	7/8
	2nd year	5/8
	3rd year	3/8
	4th year	1/8
5 years	1st year	9/10
	2nd year	7/10
	3rd year	1/2
	4th year	3/10
	5th year	1/10
Over 5 years	pro-rata	

(3) In lieu of computation according to the foregoing table, the Board may require or the insurer at its option may compute all of such reserves on a quarterly, monthly or more frequent pro-rata basis.

(4) After adopting a method for computing such reserve, an insurer shall not change methods without approval of the Board. As amended Acts 1959, 56th Leg., p. 637, ch. 291, § 1.

Emergency. Effective May 30, 1959.

Section 4 of the amendatory Act of 1959 repealed all conflicting laws and parts of

laws to the extent of such conflict and section 5 contained a severability clause.

## Art. 6.02. Reserve for Ocean and Inland Marine Trip Insurance

The entire amount of premiums on ocean and inland marine trip risks not terminated shall be deemed unearned, and the insurer shall carry a reserve equal to one hundred percent of such premiums. As amended Acts 1959, 56th Leg., p. 637, ch. 291, § 1.

## Art. 6.12. Details of Annual Statement

6. The liabilities of such company, specifying the losses adjusted and due; losses adjusted and not due; losses unadjusted; losses in suspense and the cause thereof; losses resisted and in litigation; dividends, either in script or cash, specifying the amount of each declared but not due; dividends declared and due; the amount required as the lawful reserve on all unexpired risks computed in the manner provided elsewhere in this Code; the amount due banks or other creditors, naming such banks or other creditors and the amount due to each; the amount of money borrowed by the company, of whom borrowed, the rate of interest thereon and how secured; all other claims against the company, describing the same. As amended Acts 1959, 56th Leg., p. 637, ch. 291, § 1.

Effective May 30, 1959.

## CHAPTER SEVEN—SURETY AND TRUST COMPANIES

Art.

7.01. Venue of suit on bond; service

[New].

7.19—1 Bond of Surety Company [New].

## Art. 7.01 Venue of suit on bond; service

If any suit shall be instituted upon any bond or obligation of any insurance company licensed in this State and having authority to act as surety and guarantor of the fidelity of employees, trustees, executors, administrators, guardians or others appointed to, or assuming the performance of any trust, public or private, under appointment of any court or tribunal, or under contract between private individuals or corporations, or upon any bond or bonds that may be required to be filed in any judicial proceedings, or to guarantee any contract or undertaking between individuals, or between private corporations, or between individuals or private corporations and the State and municipal corporations or counties or between corporations and individuals, or on any bond or bonds that may be required of any state official, district official, county official or official of any school district or of any municipality, the proper court of the county wherein said bond is filed shall have jurisdiction of said cause. Service therein shall be had, either upon the attorney of said company, by law required to be appointed, or upon the Chairman of the State Board of Insurance, and such service shall be to all intents valid and effectual as service upon said company. Such guaranty, fidelity and surety companies shall be deemed resident of the counties wherever they may do business, and the doing or performing of any business in any county shall be deemed an acceptance of the provisions of this Act. Added Acts 1959, 56th Leg., 2nd C.S., p. 159, ch. 39, § 1.

Emergency. Effective July 30, 1959.

Former art. 7.01 was repealed by Acts 1957, 55th Leg., p. 1162, ch. 388, § 1. Savings provisions, see note under arts. 7.02-7.18 (repealed).

**Art. 7.19—1. Bond of Surety Company**

Section 1. Whenever any bond, undertaking, recognizance or other obligation is, by law or the charter, ordinances, rules and regulations of a municipality, board, body, organization, court, judge or public officer, required or permitted to be made, given, tendered or filed, and whenever the performance of any act, duty or obligation, or the refraining from any act, is required or permitted to be guaranteed, such bond, undertaking, obligation, recognizance or guarantee may be executed by a surety company duly qualified to do business in this state; and such execution by such company of such bond, undertaking, obligation, recognizance or guarantee shall be in all respects a full and complete compliance with every law, charter, rule or regulation that such bond, undertaking, obligation, recognizance or guarantee shall be executed by one surety or by one or more sureties, or that such sureties shall be residents, or householders, or freeholders, or either, or both, or possess any other qualification and all courts, judges, heads of departments, boards, bodies, municipalities, and public officers of every character shall accept and treat such bond, undertaking, obligation, recognizance or guarantee when so executed by such company, as conforming to, and fully and completely complying with, every requirement of every such law, charter, ordinance, rule or regulation.

Provided, however, that any municipality may require in any specifications for work or supplies, on which sealed bids are required, that any corporate surety tender shall designate, in a manner satisfactory to it, an agent resident in the county of such municipality to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship. Acts 1959, 56th Leg., p. 146, ch. 87.

Emergency. Effective April 23, 1959.

*Article 7.19—1 was not enacted as part of the Insurance Code of 1951.*

Corporations acting as attorneys-in-fact for reciprocal or inter-insurance exchanges, see arts. 19.02, 19.10.

Fidelity, guaranty and surety bonds, see arts. 5.13 to 5.24.

**Title of Act:**

An Act relating to bonds, undertakings, recognizances, guarantees or other obligations executed by surety companies duly qualified to do business in Texas; providing certain exceptions for municipalities; and declaring an emergency. Acts 1959, 56th Leg., p. 146, ch. 87.

**CHAPTER EIGHT—GENERAL CASUALTY COMPANY**

**Art. 8.14. Dividends**

The directors of any such company shall not make any dividends except in compliance with Article 21.31 of this Code. As amended Acts 1959, 56th Leg., p. 642, ch. 295, § 1.

Emergency. Effective May 30, 1959.

**CHAPTER NINE—TITLE INSURANCE COMPANIES**

**Art. 9.11. Reserve**

(1) Every domestic company doing a title insurance business under the provisions of this Chapter shall establish and maintain an unearned

premium reserve during the period and for the uses and purposes hereafter provided, which shall at all times and for all purposes be deemed and shall constitute unearned portions of the original premium, and shall be charged as a reserve liability of such company in determining its financial condition.

(2) Such reserve shall be cumulative and shall be established and shall consist of the following:

(a) The reserve which has been established as has been required to be established by such companies up to the effective date of this Act, pursuant to Article 9.11 of the Insurance Code, Acts of the 52nd Legislature, Regular Session, 1951, Chapter 491 as amended by the Acts of the 54th Legislature, Regular Session, 1955, Chapter 489; and

(b) Beginning on January 1, 1959, each insurer which has accumulated the maximum unearned premium reserve of One Hundred Thousand Dollars (\$100,000.00) required by Article 9.11 Chapter 9 of the Insurance Code, as amended by Acts of 54th Legislature, Regular Session, 1955, shall reserve a sum equal to three percent (3%) of the premiums charged for title insurance contracts; and

(c) Beginning on January 1, 1959, each insurer which has not accumulated the maximum unearned premium reserve of One Hundred Thousand Dollars (\$100,000.00) required by Article 9.11, Chapter 9 of the Insurance Code, as amended by Acts of 54th Legislature, Regular Session, 1955, shall reserve a sum equal to five percent (5%) of the premiums charged for title insurance contracts until the unearned premium reserve shall have reached a total of One Hundred Thousand Dollars (\$100,000.00) and thereafter such insurer shall reserve a sum equal to three percent (3%) of the premium charged for title insurance contracts; and

(d) Beginning on January 1, 1959, each domestic insurer shall reserve a sum equal to ten percent (10%) of the risk rate charged for title insurance contracts on property outside the State of Texas. This requirement to be cumulative of, and not in addition to, the reserve requirement that might be imposed upon such insurer in such other state or states.

(3) The term "premium" as used herein means the total amount of premium as fixed and promulgated by the State Board of Insurance in accordance with Article 9.03 of this Code for title insurance contracts covering property in this state.

(4) The reserves as provided in subdivision (2) of this Article may be reduced in the following manner, which reduction may be used for any corporate purpose:

(a) As to insurers which have accumulated the maximum unearned premium reserve of One Hundred Thousand Dollars (\$100,000.00) under the provisions of (2) (a) above, as of the effective date of this Act, such unearned premium shall be reduced at the rate of one twentieth ( $\frac{1}{20}$ th) thereof per year beginning at the end of calendar year 1959 and a like amount at the end of each calendar year thereafter for twenty (20) consecutive years.

(b) As to insurers which have accumulated reserves as provided in (2) (b) and (2) (d) above, such unearned premium shall be reduced at the end of each calendar year in which the title insurance contract was issued at the rate of one twentieth ( $\frac{1}{20}$ th) of such sum per year and a like amount at the end of each calendar year thereafter for twenty (20) consecutive years.

(c) As to insurers which have accumulated reserves as provided in (2) (c) above, such unearned premium shall be reduced at the rate of one twentieth ( $\frac{1}{20}$ th) of such sum per year beginning at the end of the calendar year in which such One Hundred Thousand Dollars (\$100,000.00)

shall have been accumulated and a like amount at the end of each calendar year thereafter for twenty (20) consecutive years.

(5) Any foreign title insurance company doing business in this state shall be required to comply with the provisions of this Article unless by the laws of its state of domicile, it is required to set aside and maintain unearned premium reserve in substantially the same amount as required by this Article.

(6) Such reserve fund shall be held in cash or invested in first mortgage notes or such securities as are admissible for investment by life insurance companies under the laws of this state.

(7) In the event of the insolvency or dissolution of any such insurer, such reserve fund shall be used to protect title insurance contract holders, even though there be no accrued title insurance claims and even though there be unpaid obligations of other sorts. As amended Acts 1955, 54th Leg., p. 1223, ch. 489, § 6; Acts 1959, 56th Leg., p. 490, ch. 219, § 1.

Emergency. Effective May 22, 1959.

Section 2 of the amendatory Act of 1959 laws to the extent of such conflict and section 3 contained a severability clause.

## CHAPTER TEN—FRATERNAL BENEFIT SOCIETIES

### Art. 10.05. Benefits

(1) A society authorized to do business in this State may provide for the payment of:

- (a) Death benefits in any form;
- (b) Endowment benefits;
- (c) Annuity benefits;
- (d) Temporary or permanent disability benefits as a result of disease or accident;
- (e) Hospital, medical or nursing benefits due to sickness or bodily infirmity or accident;
- (f) Monument or tombstone benefits to the memory of deceased members not exceeding in any case the sum of Three Hundred Dollars (\$300);
- (g) For the payment of funeral benefits, and

(2) Such benefits may be provided on the lives of members or, upon application of a member, on the lives of the member's family, including the member, the member's spouse and minor children, in the same or separate certificates. As amended Acts 1959, 56th Leg., p. 352, ch. 169, § 1.

Emergency. Effective May 12, 1959.

### Art. 10.18. Funds

(a) All assets shall be held, invested and disbursed for the use and benefit of the society and no member or beneficiary shall have or acquire individual rights therein or become entitled to any apportionment or the surrender of any part thereof, except as provided in the contract.

(b) A society may create, maintain, invest, disburse and apply any special fund or funds necessary to carry out any purpose permitted by the laws of such society.

(c) Every society, the admitted assets of which are less than the sum of its accrued liabilities and reserves under all of its certificates when valued according to standards required for certificates issued one year from the effective date of this Article, shall, in every provision of the laws of the society for payments by members of such society, in whatever form made, distinctly state the purpose of the same and the

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proportion thereof which may be used for expenses, and no part of the money collected for mortuary or disability purposes or the net accretions thereto shall be used for expenses. As amended Acts 1959, 56th Leg., p. 352, ch. 169, § 2.

Emergency. Effective May 12, 1959.

## CHAPTER ELEVEN—MUTUAL LIFE INSURANCE COMPANIES

### Art. 11.09. Annual Valuation of Policies

(A) The State Board of Insurance shall annually make valuations of all outstanding policies of mutual life insurance companies as of December 31st of each year. In making such valuation the Board may use group methods and approximate averages for fractions of a year or otherwise. In making such valuation the reserve liability of all outstanding policies of sub-standard insurance shall be computed in accordance with the laws relating specifically to such policies. In making such valuation the reserve liability of all other outstanding policies of insurance and annuity contracts shall be computed on the net premium basis and in accordance with their terms and the following rules:

(1) As respects policies issued prior to January 1, 1948, the computation shall be on the basis of the American Experience Table of Mortality, with interest at such rate as may be specified in such policy contracts.

(2) As respects policies issued after the 31st day of December, 1947, the computation shall be on the basis of the mortality table and interest rate specified in the respective policies, provided that (I) the specified rate of interest shall not exceed three and one half per cent (3½%) per annum, (II) the specified table for policies other than policies of industrial life insurance shall be the American Experience Table of Mortality, the American Men Ultimate Table of Mortality, the Commissioners 1941 Standard Ordinary Mortality Table, or the Commissioners 1958 Standard Ordinary Mortality Table, and (III) the specified table for policies of industrial life insurance shall be the American Experience Table of Mortality, the Standard Industrial Mortality Table, the Sub-standard Industrial Mortality Table, the 1941 Standard Industrial Mortality Table, or the 1941 Sub-standard Industrial Mortality Table.

(3) As respects annuity contracts and contracts or policies for disability benefits and accidental death benefits, the computation shall be on the basis of the standards and methods adopted by the respective companies and approved by the State Board of Insurance.

(4) As respects policies on female risks issued after the 31st day of December, 1959, other than policies of industrial life insurance, computation shall be based on any mortality table and rate of interest permitted under the preceding paragraph (2) and specified in the respective policies, but may at the option of the company be based on an age not more than three (3) years younger than the actual age of the insured.

(B) If the gross premium charged by any mutual life insurance company on any policy or contract is less than the net premium for the policy or contract, according to the mortality table, rate of interest and method used in computing the reserve liability thereon, there shall be maintained on such policy or contract a deficiency reserve in addition to all other reserves required by law. For each such policy or contract the deficiency reserve shall be the present value according to such standard, of an annuity of the difference between such net premium and the premium

charged for such policy or contract, running for the remainder of the premium paying period. As amended Acts 1959, 56th Leg., p. 960, ch. 448, § 3.

Emergency. Effective May 30, 1959.

## CHAPTER FOURTEEN—GENERAL PROVISIONS FOR MUTUAL ASSESSMENT COMPANIES

### Art. 14.17. Certificate of Authority Required; Exemptions

It shall be the duty of the Board of Insurance Commissioners to require any corporation, person, firm, association, local mutual aid association, or any local association, company, or organization to have a certificate of authority before being authorized to carry on any insurance business in this State. If, in any event, any such company, person, firm, association, corporation, local aid association, or local organization is writing any form of insurance whatsoever without a permit or certificate of authority issued by the Department of Insurance of Texas, it shall be the duty of the Board to make known said fact to the Attorney General of the State of Texas, who is hereby required to institute proceedings in the District Court of Travis County, Texas, to restrain such corporation, person, firm, association, company, local aid association, or organization from writing any insurance of any kind or character without a permit; provided no provision of this and the preceding Article shall be construed to apply to associations which limit their membership to the employees and the families of employees of any particular designated firm, corporation, or individual, nor shall it apply to associations which limit their membership to bona fide borrowers of a Federal agency in Texas and members of the borrower's immediate family who are living with him and who are not engaged in nonfarm work for their chief income, and which association has been in existence for at least five (5) years, and which are not operated for profit and which pay no commissions to anyone and whose operating expenses do not exceed Three Hundred Dollars (\$300) per month; provided, however, that all such associations shall make annual reports to the Department of Insurance on blanks furnished for that purpose, showing the financial condition, the receipts and expenditures, and such other facts as the Board of Insurance Commissioners may require. No such association shall be permitted to operate, however, without making report to the Insurance Department of the State of Texas and securing a permit to so function. Such permit shall be for the current year or fractional part thereof and shall expire on the thirty-first day of May thereafter and shall be renewed annually upon the approval of the financial statement of the organization by the Board of Insurance Commissioners. As amended Acts 1959, 56th Leg., p. 661, ch. 304, § 1; Acts 1959, 56th Leg., p. 1085, ch. 496, § 1.

*Repeal of this article to the extent that it requires periodic renewal of certificates, see note under art. 1.14.*

Amendment by Acts 1959, 56th Leg., p. 661, ch. 304, effective May 30, 1959.

Amendment by Acts 1959, 56th Leg., p. 1085, ch. 496, effective 90 days after May 12, 1959, date of adjournment.

Section 2 of the amendatory Act of 1959 ch. 304, contained a severability clause.

The 1959 amendments by chapters 304 and 496 were identical except that the amendment by chapter 304 referred to operating expenses of \$150 rather than \$300.



CHAPTER NINETEEN—RECIPROCAL EXCHANGES

Art. 19.02. Attorney for Subscribers

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A corporation may be organized in Texas to act as attorney-in-fact for a reciprocal or inter-insurance exchange. The general laws for incorporation shall supplement the provisions of this Act to the extent that they are not inconsistent with the provisions hereof. Added Acts 1959, 56th Leg., p. 355, ch. 172, § 1.

Emergency. Effective May 18, 1959.

1959 Legislature added paragraph at the end of the article authorizing a corporation to act as attorney-in-fact.

Section 4 of the amendatory Act of 1959 repealed all conflicting laws and parts of laws and contained a severability clause.

Art. 19.10. Certificate of Authority

Such attorney-in-fact by whom or through whom are issued any policies of or contracts of indemnity of the character referred to herein shall procure from the State Board of Insurance of Texas a Certificate of Authority as provided in Article 1.14, and the provisions of Article 2.20 shall be applicable as well as to renewal Certificates of Authority.

A Certificate of Authority issued as provided in this Article, shall fully authorize the named person, firm or corporation to exercise all of the powers and perform all of the duties of such attorney-in-fact; provided, that any corporation acting as the attorney-in-fact for a reciprocal or inter-insurance exchange which is required to procure a Certificate of Authority from the State Board of Insurance of Texas shall not be deemed to be doing business in this state within the meaning of any laws applying to foreign corporations. As amended Acts 1955, 54th Leg., p. 413, ch. 117, § 49; Acts 1959, 56th Leg., p. 355, ch. 172, § 2.

Emergency. Effective May 18, 1959.

CHAPTER TWENTY—GROUP HOSPITAL SERVICE

Art. 20.10. Corporations Nonprofit; Salaries; Funds; Investments

Such corporations shall be governed and conducted as nonprofit organizations for the purpose of offering and furnishing hospital services to their members, in consideration of the payment by such members of a definite sum for hospital care and services so contracted to be furnished; and provided that no paid officer or employee of said corporations shall receive more than Twelve Thousand, Five Hundred Dollars (\$12,500.00) per annum for his services, unless such payment be first authorized by a vote of the board of directors of such company, or by a committee of such board charged with the duty of authorizing such payments. Provided, further, that there shall be two funds, namely: the Claim Fund and the Expense Fund. The Claim Fund shall be composed of at least eighty percent (80%) of the regular payments by members, except the application fees. The Expense Fund shall be composed of not more than twenty percent (20%) of regular payments by members, and the application fees. The application fees shall be paid by applicants prior to becoming members, for the privilege of becoming members, and shall not apply as a part of the cost of receiving benefits under policies issued. Claim Fund investments may include only such as are legal investments for the reserve funds of life, health and accident insurance companies; and Ex-

pense Fund investments may include only such as are legal investments for the capital, surplus and contingency funds of capital stock life insurance companies. The net income from the investments shall accrue to the funds, respectively, from which the investments were made. The Claim Fund shall be disbursed only for the payment of valid claims and to the extent approved by the Board of Insurance Commissioners for the cost of settling contested claims, and necessary expenses directly incurred on investments of the Claim Fund. As amended Acts 1959, 56th Leg., p. 331, ch. 163, § 1.

Effective May 12, 1959.

Section 5 of Acts 1959, 56th Leg., p. 331, ch. 163, declared all conflicting laws and parts of laws inapplicable to all corpora-

tions chartered and operated under this act. Section 6 contained a severability clause.

#### Art. 20.12. Prohibition Against Contracting for Medical Services

Such corporations shall not contract to furnish to the member a physician or any medical services, nor shall said corporation contract to practice medicine in any manner, nor shall said corporation control or attempt to control the relations existing between said member and his or her physician, but said corporation shall confine its activities to rendering hospital service only through such type of hospitals with whom it has contracts, without restricting the right of the patient to obtain the services of any licensed doctor of medicine. In addition, such corporations are hereby authorized to provide benefits for medical and/or surgical care on the basis of indemnity payments for expenses incurred. As amended Acts 1959, 56th Leg., p. 331, ch. 163, § 2.

Effective May 12, 1959.

#### Art. 20.16. Membership Certificates

Every such corporation shall issue to its members certificates of membership setting forth the benefits to which they are or may become entitled. Such certificates, and the contracts made between the corporation and the member's employer or group representative shall be in form approved by the State Board of Insurance. As amended Acts 1959, 56th Leg., p. 331, ch. 163, § 3.

Effective May 12, 1959.

#### Art. 20.19. Participation Contracts; Re-insurance; Agreements

Such corporations shall be authorized to contract with other organizations similar in character for joint participation through mutualization contract agreements, re-insurance treaties or otherwise and cede or accept risks from any insurance company or insurer upon the whole or any part of any risks, provided that such contract forms, documents, treaties or agreement forms are filed with and approved by the State Board of Insurance for such purposes. As amended Acts 1959, 56th Leg., p. 331, ch. 163, § 4.

Effective May 12, 1959.

## CHAPTER TWENTY-ONE—GENERAL PROVISIONS

### SUBCHAPTER A. AGENTS AND AGENTS' LICENSES

#### Art. 21.07. Licensing of Agents

Sec. 2. Annual License; Surrender or Cancellation. Any license so issued by the Board of Insurance Commissioners to any person shall re-

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main in force and effect for a period of one year from the date of issuance of such license; at the end of which time he may be issued a new license. Such agent may at any time he desires surrender, voluntarily, his license by filing notice thereof with the Board of Insurance Commissioners, or said license may be cancelled by the Board of Insurance Commissioners for cause, or if such persons shall not have outstanding a legal and definite appointment by some life insurance company, life and health, health and accident, or life, health and accident insurance company or association, or organization, or local mutual aid association, or statewide mutual association soliciting or writing insurance in the State of Texas, to act as its agent, in which latter event the license shall be forfeited. As amended Acts 1959, 56th Leg., p. 665, ch. 308, § 1.

**Sec. 3. Notice to Board of Persons Appointed.** When any life insurance company, accident insurance company, life and accident, health and accident, or life, health and accident insurance company, or association, or organization, or local mutual aid association, or statewide mutual association soliciting or writing business in this state shall employ any such person who has received such license, as its agent, such company shall notify the Board of Insurance Commissioners of such appointment and employment, and thereafter such person shall prima facie be deemed, for the purposes of this Article, to be the agent of such life insurance company, accident insurance company, life and accident, health and accident, or life, health and accident insurance company, or association, or organization, or local mutual aid association, or statewide mutual association, until such employment and appointment has been terminated and withdrawn or cancelled by such company, association or organization, by giving notice thereof to the Board of Insurance Commissioners, or has been terminated and withdrawn or cancelled under other provisions of this Article. As amended Acts 1959, 56th Leg., p. 665, ch. 308, § 1.

**Sec. 7. Annual License.** Any agent complying with the terms of this Article shall be licensed annually with his license to expire one year from the date of issue, unless prior thereto it is suspended or revoked by the Board of Insurance Commissioners. Upon making application for a renewal license and paying the proper fees therefor prior to the date of expiration, the current license shall continue in force until the renewal license is issued or has been refused by the Board of Insurance Commissioners. As amended Acts 1959, 56th Leg., p. 665, ch. 308, § 2.

Emergency. Effective May 30, 1959.

#### Art. 21.07—1. Legal Reserve Life Insurance Agents; Examination; Licenses

**Sec. 8. Agent May be Licensed to Represent Additional Insurers.—**  
(a) Any life insurance agent licensed in this state may represent and act as a life insurance agent for more than one legal reserve life insurance company at any time while his license is in force, if he so desires. Any such life insurance agent and the company involved must give notice to the Commissioner of Insurance of any additional appointment or appointments authorizing him to act as a life insurance agent for an additional legal reserve life insurance company or companies. Such notice must set forth the insurer or insurers which the agent is then licensed to represent, and shall be accompanied by a certificate from each insurer to be named in each additional appointment, that said insurer desires to appoint the applicant as its agent. This notice shall also contain such other information as the Commissioner may require. The agent shall be required to pay a fee of \$2.00 for each additional appointment applied for,

which fee shall accompany the notice. Any insurer may file a request with the Insurance Commissioner for notification in the event any agent licensed to represent such insurer has given the Commissioner of Insurance notice of an additional appointment to represent another insurer; and in such event the Commissioner shall notify the insurer filing such request.

(b) Any life insurance agent licensed in this state may place excess or rejected risks with any legal reserve life insurance company lawfully doing business in this state other than an insurer such agent is licensed to represent; provided, however, that such life insurance agent shall procure an additional appointment to represent such other insurer before receiving commissions or other compensations for his services. As amended Acts 1959, 56th Leg., p. 665, ch. 308, § 3.

**Sec. 9. Expiration and Renewal of License.** (a) Each license issued to a life insurance agent shall expire one year following the date of issue, unless prior thereto it is suspended or revoked by the Insurance Commissioner or the authority of the agent to act for the insurer is terminated.

(b) Licenses which have not expired or which have not been suspended or revoked, may be renewed from year to year upon request in writing of the agent.

(c) Each request for renewal of license shall show whether the agent devotes all or part of his efforts to acting as a life insurance agent, and if part only, how much time he devotes to such work.

(d) Upon the filing of a request for renewal of license, and payment of a renewal fee of \$5.00 for such license, prior to the date of expiration, the current license shall continue in force until the renewal license is issued by the Commissioner or until the Commissioner has refused, for cause, to issue such renewal license, as provided in Section 12, of this Act, and has given notice of such refusal in writing to the insurer and the agent.

(e) The appointment or appointments given under Section 4 or Section 8 of this Act authorizing the agent to act as a life insurance agent for a legal reserve life insurance company or companies, shall continue in full force and effect, without the necessity of renewal, until terminated and withdrawn by the companies in accordance with Section 11 of this Act, or otherwise terminated in accordance with this Act, and each renewal license issued to the agent shall authorize him to represent and act for the companies for which he holds an appointment until the appointment is so terminated, and the agent shall prima facie be deemed, for the purpose of this Article, to be the agent of the appointing companies. As amended Acts 1959, 56th Leg., p. 665, ch. 308, § 3.

Emergency. Effective May 30, 1959.

#### Art. 21.14. Licensing of Local Recording Agents and Solicitors; Life, Health and Accident Insurance Excepted; Other Exceptions

**Sec. 8. Expiration of License; Renewal.**—Every license issued to a local recording agent shall expire one year from the date of its issue, unless an application to qualify for the renewal of any such license shall be filed with the Board of Insurance Commissioners and fee paid on or before such date, in which event the license sought to be renewed shall continue in full force and effect until renewed or renewal is denied. Every license issued to a solicitor for a local recording agent shall expire on the same date that the license of the local recording agent expires, unless an application to qualify for the renewal of the local recording agent's license

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and the solicitor's license shall be filed with the Board of Insurance Commissioners and fee paid on or before such date, in which event the solicitor's license sought to be renewed shall continue in full force and effect until renewed or renewal is denied. As amended Acts 1959, 56th Leg., p. 665, ch. 308, § 4.

**Sec. 12. Notice to Commissioner of Insurance of Appointment of Local Recording Agent by Insurance Company.** After a person or firm shall be granted a license as a local recording agent in this state, he shall be authorized to act as such local recording agent, only after and during the time such person or firm has been authorized so to do, by an insurance company or carrier having a permit to do business in this state; and when so authorized each company or carrier or its general or state or special agent making the appointment shall immediately notify the Commissioner of Insurance, on such form as the Commissioner may require, of the appointment. The agent shall be required to pay a fee of \$2.00 for each appointment applied for, which fee shall accompany the notice, and such person or firm shall be presumed to be the agent for such company in this state until such company or its general or state or special agent shall have delivered written notice to the Commissioner of Insurance that such appointment has been withdrawn. As amended Acts 1959, 56th Leg., p. 665, ch. 308, § 5.

Emergency. Effective May 30, 1959.

#### SUBCHAPTER D. CONSOLIDATION, LIQUIDATION, REHABILITATION, REORGANIZATION OR CONSERVATION OF INSURERS

##### Art. 21.26. Consolidation

**Sec. 1.** Such companies proposing to consolidate may unite their assets, or any part thereof, and become incorporated in one body under the name of any one or more of such companies or under any other name that may be agreed upon, and issue stock in such corporation to the stockholders of each of the companies consolidated, the actual value of which stock in the new company shall bear the same proportion to the actual value of the stock surrendered by such stockholders as the entire assets of the company surrendering such stock bears to the entire assets of the new company, which value shall be agreed upon by the board of directors of each company; provided, that said stockholders (holding two-thirds of the stock) may at the meeting provided for in the preceding Article delegate the valuation of assets to a committee of stockholders appointed by their respective boards of directors; or

**Sec. 2.** One company may take over all the assets of the other companies proposing to consolidate and issue stock to their stockholders in the proportion that the value of their stock bears to the entire value of the assets of the company in which they are stockholders, and for this purpose the capital stock of such purchasing company may be increased, as now or may be hereafter provided by law.

**Sec. 3.** In case of consolidation under the first option provided in the first Section hereof, the Board shall, upon proof furnished of compliance with the terms hereof and being satisfied that the proposed consolidation is for the best interests of the policyholders of the respective companies and made in accordance with law, and upon the filing of Articles of incorporation and other due proceedings had as required by the laws of this state, issue and deliver a charter to such new company.

**Sec. 4.** Such consolidation shall work a dissolution of the companies absorbed, but shall in no-wise prejudice the right of any creditor of any

such corporation to have payment of his debt out of the assets and property thereof, nor shall any creditor be thereby deprived of, nor prejudiced in any right of action then pending or existing or which may thereafter arise against said company, and service or summons of the proper officers or agents of such new or reorganized corporation shall be deemed sufficient as to all or any of such companies.

Sec. 5. All policies of insurance outstanding against all such companies shall, by reason of such consolidation, be assumed by the reorganized company, and they shall carry out the terms of such policy on the part of the insurer and be entitled to all the rights and privileges thereof and the reserves accumulating on such policy prior to such consolidation.

Sec. 6. In the event of the consolidation or merger of any two or more insurance companies under the provisions of this Act, all investments of such companies so absorbed by such consolidation or merger that were authorized when made, by the laws of the state in which such insurance companies were organized, as proper securities or assets, including real property for investment of funds of an insurance company, and which are taken over by such new or reorganized corporation by virtue of a consolidation or merger under the provisions of the Act, shall be, under the laws of this state, considered as valid securities or assets, including real property, of such new or reorganized corporation by virtue of a consolidation under the provisions of this Act, provided such investments are approved by the State Board of Insurance of this state, and the same are taken over on terms satisfactory to said Board; provided, however, that in the event the new or reorganized corporation, which is subject to the provisions of Article 3.40 of this Code, acquires by virtue of such consolidation more than one building site and office building for its accommodation in the transaction of its business and for lease and rental, such new or reorganized corporation shall sell and dispose of all but one building site and office building within five (5) years after the date of such consolidation, provided that the new or reorganized corporation shall not hold such property for a longer period unless it shall procure a certificate from the Board that its interests will materially suffer by the forced sale thereof; in which event the time for the sale thereof may be extended to such time as the Board shall direct in such certificate.

Sec. 7. Any insurance company organized and operating under the laws of this state may merge or consolidate with an insurance company organized under the laws of another state and authorized to do an insurance business in this state, provided the two companies are doing similar lines of insurance business, by meeting the requirements of this Article. The merger or consolidation shall not become effective until (1) the Commissioner of Insurance has found that the proposed merger or consolidation is for the best interest of the policyholders and the stockholders of the respective companies, and has approved the merger or consolidation as being in accordance with the laws of this state, and (2) the merger or consolidation has been approved by the proper official of the domiciliary state of the out of state corporation. As amended Acts 1959, 56th Leg., p. 697, ch. 319, § 1.

Emergency. Effective May 30, 1959.

Section 2 of the amendatory Act of 1959 repealed all conflicting laws and parts of laws.

SUBCHAPTER E. MISCELLANEOUS PROVISIONS

**Art. 21.32. Unlawful Dividend**

No life, health, fire, marine, or inland insurance company, organized under the laws of this state, shall make any dividend except from the surplus profits arising from its business. In estimating such profits, there shall be reserved therefrom the lawful reserve on all unexpired risks computed in the manner as provided elsewhere in this Code, and also there shall be reserved the amount of all unpaid losses, whether adjusted or unadjusted; all sums due the company on bonds, mortgages, stocks and book-accounts, of which no part of the principal or the interest thereon has been paid during the year preceding such estimate of profits, and upon which suit for foreclosures or collections has not been commenced, or which after judgment has been obtained thereon shall have remained more than two years unsatisfied, and upon which interest shall not have been paid. In case of any such judgment, the interest due or accrued thereon and remaining unpaid shall also be reserved. Any dividend made contrary to the provisions of this Article shall subject the company making it to a forfeiture of its charter, and the Board shall forthwith revoke its certificate of authority. As amended Acts 1959, 56th Leg., p. 637, ch. 291, § 2.

Emergency. Effective May 30, 1959.

**Art. 21.43. Foreign Insurance Corporations**

The provisions of this code are conditions upon which foreign insurance corporations shall be permitted to do business within this state, and any such foreign corporation engaged in issuing contracts or policies within this state shall be held to have assented thereto as a condition precedent to its right to engage in such business within this state.

No foreign or alien insurance corporation shall be denied permission to do business within this state for the reason that all of its authorized capital stock has not been fully subscribed and paid for; provided

(1) that at least the minimum dollar amount of capital stock of such corporation required by the laws of this state (which may be less than all of its authorized capital stock) has been subscribed and paid for; and

(2) that it has at least the minimum dollar amount of surplus required by the laws of this state for the kinds of business such corporations seek to write; and

(3) that such corporation has fully complied with all laws of its domiciliary state relating to authorization and issuance of capital stock. As amended Acts 1959, 56th Leg., p. 172, ch. 98, § 1.

Emergency. Effective April 28, 1959.

Section 2 of the amendatory Act of 1959 repealed all conflicting laws and parts of laws and contained a severability clause.

## TITLE 82—JUVENILES

Art.		Art.	
5139H—4.	Juvenile boards in 81st Judicial District [New].	5139CC.	Hunt county juvenile board [New].
5139Y.	Nolan county juvenile board [New].	5139DD.	Gray County juvenile board [New].
5139Z.	Andrews county juvenile board [New].	5139EE.	Crane County Juvenile Board [New].
5139AA.	Marion County Juvenile Board [New].	5139FF.	Hutchinson County Juvenile Board [New].
5139BB.	Liberty county juvenile board [New].		

### Art. 5138a. Parental homes and schools for delinquents in certain counties

Donation by home rule city of unimproved land to counties for use by juvenile board, see art. 1182d—1.

### Art. 5139H—4. Juvenile boards in 81st Judicial District

In each county comprising the 81st Judicial District, the Judge of the District Court, together with the County Judge of the county, shall constitute the Juvenile Board of such county. The members of such Board in each county shall each be allowed additional compensation of not less than Three Hundred Dollars (\$300) per annum and not more than Twelve Hundred Dollars (\$1,200) per annum, to be fixed by the Commissioners Court and paid monthly in twelve (12) equal installments out of the general fund of the county; and provided that the compensation allowed County Judges hereunder shall not be counted as fees of office. Acts 1959, 56th Leg., p. 995, ch. 463, § 1.

Emergency. Effective May 30, 1959.

Section 2 of the Acts of 1959, provided:  
"This Act shall be cumulative of existing

Laws relating to compensation of Judges of the District Courts and County Judges."

Section 3 contained a severability clause.

### Art. 5139J. Juvenile Boards in Harrison and Rusk counties

Sec. 3. Each juvenile board established by this Act shall have all powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of Texas, 1925, and any amendments thereto. Acts 1955, 54th Leg., p. 385, ch. 106 as amended Acts 1959, 56th Leg., p. 1018, ch. 470, § 1.

Emergency. Effective April 26, 1955.

Sec. 3a. The juvenile board of Harrison County may appoint a juvenile officer, whose salary shall be fixed by the Commissioners Court of said county in an amount not to exceed Three Thousand Dollars (\$3,000) per year, and whose allowance for expenses shall not exceed Five Hundred Dollars (\$500) per year. The juvenile officer shall have the powers and duties prescribed by Article 5142 of the Revised Civil Statutes of Texas, 1925, and any amendments thereto. All claims for expenses of the juvenile officer shall be certified by the chairman of the juvenile board as being necessary in the performance of the duties of the juvenile officer. The Commissioners Court shall provide the necessary funds for payment of the salary and expenses of the juvenile officer. Added Acts 1959, 56th Leg., p. 1018, ch. 470, § 2.



Sec. 3b. The juvenile board of Rusk County may appoint a juvenile officer whose salary shall be fixed by the Commissioners Court of said county in an amount not less than Three Thousand Dollars (\$3,000) per year nor more than Six Thousand Dollars (\$6,000) per year. In addition, the Commissioners Court shall fix a reasonable allowance for the expenses of such officer. The juvenile officer shall have the powers and duties prescribed by Article 5142, of the Revised Civil Statutes of Texas, 1925, and any amendments thereto. All claims for expenses of the juvenile officer shall be certified by the chairman of the juvenile board as being necessary in the performance of the duties of the juvenile officer. The Commissioners Court of the county shall have authority to accept contributions by way of gifts, grants or donations from cities, towns, other political subdivisions, organizations, or individuals, to be used in part payment of the salary and expenses of the juvenile officer. Such gifts, grants, or donations, shall be placed in a special fund and disbursed in payment of the salary and expenses of the juvenile officer as fixed by the order of the Commissioners Court of the county. The Commissioners Court shall provide the necessary funds for payment of the salary and expenses of the juvenile officer from the special fund established for that purpose and created by contributions or from the general fund of the county as may be necessary; provided, however, that the total amount payable from all sources to the juvenile officer for salary and expenses in any one year shall not exceed the amount authorized to be paid to such officer by this Section. Added Acts 1959, 56th Leg., p. 1018, ch. 470, § 3.

Emergency. Effective May 30, 1959.

#### Art. 5139Y. Nolan county juvenile board

Section 1. There is established a juvenile board for Nolan County to be called the "Nolan County Juvenile Board", which shall be composed of a total of seven (7) non-salaried members, two (2) members appointed by the Nolan County Commissioners Court, two (2) members appointed by the Sweetwater City Commission, two (2) members appointed by the Board of Trustees of the Sweetwater Independent School District, and one member appointed by the above-named six. The juvenile board shall annually elect, by majority vote, a chairman who shall preside over meetings to be scheduled by the board.

Sec. 2. The Nolan County Juvenile Board shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of Texas, 1925, and any amendments thereto. If the board determines that it is desirable to have a juvenile officer for Nolan County, it may appoint a juvenile officer for a term not to exceed two (2) years, at the end of which term, the board may appoint another juvenile officer for succeeding terms not exceeding two (2) years for each term. No person shall be disqualified from serving as juvenile officer for the reason that he has previously served in that capacity.

Sec. 3. The person appointed as juvenile officer shall be a person trained and qualified in the field of juvenile and parental counseling, truancy and law enforcement. The juvenile officer shall have all the powers and duties prescribed by Article 5142 of the Revised Civil Statutes of Texas, 1925, and any amendments thereto, and shall be directly accountable to the juvenile board. The juvenile officer shall receive an annual salary to be fixed by the board in an amount not to exceed Six Thousand Dollars (\$6,000) per year and shall receive an annual allowance for expenses in an amount to be determined by the board.

Sec. 4. The Commissioners Court of Nolan County may enter into an agreement with the City Commission of Sweetwater and the Board of

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

Trustees of the Sweetwater Independent School District to provide the necessary funds for payment of the salary and expenses of the juvenile officer. The agreement shall provide that the Commissioners Court of Nolan County, the City Commission of Sweetwater, and the Board of Trustees of the Sweetwater Independent School District each furnish equal, one-third ( $\frac{1}{3}$ ) shares of the funds necessary for the payment of the salary and expenses of the juvenile officer. Acts 1959, 57th Leg., p. 32, ch. 20.

Emergency. Effective March 6, 1959.

Title of Act:

An Act establishing the Nolan County Juvenile Board; and declaring an emergency. Acts 1959, 57th Leg., p. 32, ch. 20.

#### Art. 5139Z. Andrews county juvenile board

Section 1. There is hereby established a Juvenile Board for Andrews County, which shall be known as the Andrews County Juvenile Board. It shall be composed of the county judge of Andrews County and the judge of each judicial district which includes Andrews County. The judge of the court which is designated as the juvenile court for Andrews County shall be chairman of the board and its chief administrative officer. The board shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of 1925, and any amendments thereto.

Sec. 2. As compensation for the added duties hereby imposed upon him, the chairman of such board may be allowed additional compensation in the amount of Twelve Hundred Dollars (\$1200.00) per annum, which shall be paid in twelve (12) equal installments out of the General Fund or any other available fund of Andrews County. The Commissioners Court of Andrews County may allow each other member of the board additional compensation in an amount not to exceed Twelve Hundred Dollars (\$1200.00) per annum, to be paid in twelve (12) equal installments out of the General Fund or any other available fund of Andrews County. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges and district judges.

Sec. 3. This Act shall be cumulative of existing laws relating to compensation of judges of the district courts and county judges. Acts 1959, 56th Leg., p. 145, ch. 86.

Emergency. Effective April 23, 1959.

Title of Act:

An Act establishing the Andrews County Juvenile Board; prescribing its membership and powers and providing for

compensation of its members; repealing conflicting laws; providing for severability; and declaring an emergency. Acts 1959, 56th Leg., p. 145, ch. 86.

#### Art. 5139AA. Marion County Juvenile Board

Section 1. There is hereby established the Marion County Juvenile Board, which shall be composed of the County Judge of Marion County and the Judge of each Judicial District which includes Marion County. The Judge of the Court which is designated as the Juvenile Court for Marion County shall be Chairman of the Board and its chief administrative officer.

Sec. 2. As compensation for the added duties imposed upon members of such Juvenile Board, each member thereof may be allowed additional compensation of not less than Six Hundred Dollars (\$600) per year and not to exceed Twelve Hundred Dollars (\$1200) per year, to be fixed by the Commissioners Court of Marion County and paid monthly in twelve (12) equal installments out of the general fund of the County. Such compensation shall be in addition to all other com-

pensation now provided or allowed by law for county judges and district judges.

Sec. 3. The Marion County Juvenile Board shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of 1925 and any amendments thereto. If the Juvenile Board determines that it is necessary to have a Juvenile Officer for Marion County, it may appoint a Juvenile Officer, whose salary shall be fixed by the Commissioners Court of Marion County in an amount not to exceed Three Thousand Dollars (\$3,000) per year, and whose allowance for expenses shall not exceed Five Hundred Dollars (\$500) per year. The Juvenile Officer shall have the powers and duties prescribed by Article 5142 of the Revised Civil Statutes of 1925 and any amendments thereto. All claims for expenses of the Juvenile Officer shall be certified by the Chairman of the Juvenile Board as being necessary in the performance of the duties of the Juvenile Officer. The Commissioners Court of Marion County shall provide the necessary funds for payment of the salary and expenses of the Juvenile Officer. Acts 1959, 56th Leg., p. 188, ch. 106.

Emergency. Effective April 28, 1959.

Section 4 of the Act of 1959 repealed all conflicting laws and parts of laws. Section 5 contained a severability clause.

**Title of Act:**

An Act establishing the Marion County Juvenile Board; prescribing its membership and powers providing for compensa-

tion of its members; authorizing appointment of a Juvenile Officer; prescribing his powers and duties and providing for his compensation and expenses; repealing conflicting laws; providing for severability; and declaring an emergency. Acts 1959, 56th Leg., p. 188, ch. 106.

### **Art. 5139BB. Liberty county juvenile board**

Section 1. There is hereby established a county juvenile board in Liberty County, which shall be composed of the county judge of the County Court of Liberty County and one (1) citizen of Liberty County, which citizen shall be appointed by the County Commissioners Court of Liberty County for a period of two (2) years. The official title of the board shall be the Liberty County Juvenile Board. The judge of the County Court which is designated as the juvenile court of the county shall be the chairman of the board and its chief administrative officer.

Sec. 2. As compensation for the added duties imposed upon members of the juvenile board, each member thereof may be allowed additional compensation not to exceed One Thousand, Eight Hundred Dollars (\$1,800) per year, to be fixed by the Commissioners Court of the county and paid monthly in twelve (12) equal installments out of the general fund or any other appropriate fund of the County. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges or any salary now received by said citizen member of the Liberty County Juvenile Board.

Sec. 3. The juvenile board established by this Act shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of 1925 and any amendments thereto. The board may appoint a juvenile officer, whose salary shall be fixed by the Commissioners Court of said Liberty County in an amount not to exceed Three Thousand, Six Hundred Dollars (\$3,600) per year, and whose allowance for expenses shall not exceed Five Hundred Dollars (\$500) per year. The juvenile officer shall have the powers and duties prescribed by Article 5142 of the Revised Civil Statutes of 1925 and any amendments thereto. All claims for expenses of the juvenile officer shall be certified by the chairman of the juvenile board as being necessary in the performance of the duties of

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the juvenile officer. The Commissioners Court shall provide the necessary funds for payment of the salary and expenses of the juvenile officer. The same person may serve as the juvenile officer and the citizen member of the Liberty County Juvenile Board; however, if the citizen member of the Liberty County Juvenile Board also is appointed to serve as the juvenile officer then he shall receive only the compensation set forth herein for the juvenile officer. Acts 1959, 56th Leg., p. 480, ch. 209.

Emergency. Effective May 21, 1959.

Section 4 of the Act of 1959 repealed all conflicting laws and parts of laws to the extent of such conflict and section 5 contained a severability clause.

#### Art. 5139CC. Hunt county juvenile board

Section 1. There is hereby established a County Juvenile Board in Hunt County, which shall be composed of the county judge, the judge of each judicial district which includes Hunt County, and two citizens of Hunt County who shall be appointed by the Commissioners Court of Hunt County to serve for a period of two years, as shall their successors.

Sec. 2. The official title of said Board shall be the "Hunt County Juvenile Board."

Sec. 3. The judge of the court which is designated as the juvenile court for Hunt County shall be chairman of the Board and its chief administrative officer. The Hunt County Juvenile Board shall have all the powers conferred upon Juvenile Boards created under Article 5139 of the Revised Civil Statutes of Texas, 1925, and any amendments thereto.

Sec. 4. As compensation for the added duties imposed upon the members of the Juvenile Board, each member thereof may be allowed additional compensation not to exceed Twelve Hundred Dollars (\$1,200.00) per year, to be fixed by the Commissioners Court of Hunt County, and paid monthly in twelve (12) equal installments out of the general fund or any other available fund of the county. Such compensation shall be in addition to all other compensation now provided or allowed by law for the county judges and district judges and shall not be counted as fees of office. This Act shall be cumulative of existing laws relating to compensation for judges of district courts and county judges. Acts 1959, 56th Leg., p. 662, ch. 305.

Emergency. Effective May 30, 1959.

Section 5 of the Act of 1959 contained a severability clause.

##### Title of Act:

An Act establishing the Hunt County Juvenile Board; prescribing its member-

ship and powers; providing for compensation of its members; providing for severability; and declaring an emergency. Acts 1959, 56th Leg., p. 662, ch. 305.

#### Art. 5139DD. Gray County juvenile board

Section 1. There is hereby established the Gray County Juvenile Board, which shall be composed of the county judge of Gray County and the judge of each judicial district which includes Gray County. The county judge of said county shall be chairman of said Board and its chief administrative officer.

Sec. 2. As compensation for the added duties hereby imposed upon him, the chairman of such Board may be allowed additional compensation not to exceed Two Thousand, Four Hundred Dollars (\$2,400.00) per year, which shall be paid in twelve (12) equal installments out of the general fund or any other available fund of Gray County. The commissioners court of Gray County may allow each other member of the Board additional compensation in an amount not to exceed One Thousand, Two Hundred

Dollars (\$1,200.00) per annum, to be paid in twelve (12) equal installments out of the general fund or any other available fund of Gray County. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges and district judges. Acts 1959, 56th Leg., p. 742, ch. 336.

Emergency. Effective May 30, 1959.

**Title of Act:**

An Act creating a Juvenile Board for Gray County and designating the chairman thereof; providing additional compensation for county and district judges serving thereon; stating the effect of this Act on existing laws; and declaring an emergency. Acts 1959, 56th Leg., p. 742, ch. 336.

**Art. 5139EE. Crane County Juvenile Board**

Section 1. There is hereby established a county juvenile board in and for Crane County, which shall be composed of the county judge and the judge of each judicial district which includes Crane County. The official title of the board shall be the Crane County Juvenile Board. The judge of the court which is designated as the juvenile court of the county shall be the chairman of the board and its chief administrative officer.

Sec. 2. As compensation for the added duties hereby imposed upon the members of the board the Commissioners Court of the County may allow the chairman of the board additional compensation in an amount not to exceed One Thousand, Two Hundred Dollars (\$1,200) per year, and may allow each other member of the board additional compensation in an amount not to exceed Six Hundred Dollars (\$600) per year, to be paid monthly in twelve (12) equal installments out of the general fund or other available fund of the county. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges and district judges.

Sec. 3. The juvenile board established by this Act shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of 1925 and any amendments thereto. The board may appoint a juvenile officer, whose salary shall be fixed by the Commissioners Court of the county in an amount not to exceed Five Thousand, Four Hundred Dollars (\$5,400) per year. The juvenile officer may be allowed his reasonable and necessary expenses, subject to such maximum amount as may be fixed by the Commissioners Court. The juvenile officer shall have the powers and duties prescribed by Article 5142 of the Revised Civil Statutes of 1925 and any amendments thereto. All claims for expenses of the juvenile officer shall be certified by the chairman of the juvenile board as being necessary in the performance of the duties of the juvenile officer. The Commissioners Court shall provide the necessary funds for payment of the salary and expenses of the juvenile officer. Acts 1959, 56th Leg., p. 919, ch. 423.

Emergency. Effective May 30, 1959.

Section 4 of the Act of 1959 repealed all conflicting laws and parts of laws to the extent of such conflict. Section 5 contained a severability clause.

**Art. 5139FF. Hutchinson County Juvenile Board**

Section 1. There is hereby established a county juvenile board in and for Hutchinson County, which shall be composed of a total of five (5) non-salaried members, one member the Judge of the Court of Domestic Relations in and for Hutchinson County, one member the Judge of the Judicial District which includes Hutchinson County, one member the Judge of the County Court of Hutchinson County, one member appointed by the Hutchinson County Commissioners Court and one member appointed by the

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

Borger Bar Association. The appointed members of the board shall be appointed for a term not to exceed one year. The official title of the board shall be the Hutchinson County Juvenile Board. The Judge of the Court of Domestic Relations in and for Hutchinson County shall be the chairman of the board and its chief administrative officer.

Sec. 2. The Hutchinson County Juvenile Board shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of Texas, 1925, and any amendments thereto. The board shall appoint a juvenile officer, whose salary shall be fixed by the Commissioners Court of the county in an amount not to exceed Six Thousand Dollars (\$6,000) per year. The juvenile officer may be allowed his reasonable and necessary expenses, subject to such maximum amount as may be fixed by the Commissioners Court.

Sec. 3. If the board determines that it is desirable to have one or two (2) assistant juvenile officers it may appoint such assistant juvenile officers whose salaries shall be set by the Commissioners Court. All appointments made by the Hutchinson County Juvenile Board shall be made subject to the approval of the Commissioners Court of Hutchinson County. If the Commissioners Court fails to approve within thirty (30) days any appointment made by the juvenile board, the appointee is automatically approved. The juvenile board by majority vote shall have the power to discharge any appointee and such discharge need not be approved by the Commissioners Court. The juvenile officer shall have the powers and duties prescribed by Article 5142 of the Revised Civil Statutes of 1925 and any amendments thereto. All claims for expenses of the juvenile officer shall be certified by the chairman of the juvenile board as being necessary in the performance of the duties of the juvenile officer. The Commissioners Court shall provide the necessary funds for payment of the salary and expenses of the juvenile officer. Acts 1959, 56th Leg., 2nd C.S., p. 157, ch. 37.

Effective 90 days after July 16, 1959,  
date of adjournment.

Section 4 of the Act of 1959 repealed all  
conflicting laws and parts of laws to the

extent of such conflict. Section 5 con-  
tained a severability clause.

## TITLE 83—LABOR

## CHAPTER FOUR—BOND TO SECURE WAGES

## Art. 5160. Bond for wages

**Contractors' bonds for performance and payment for labor and material**

A. Any person or persons, firm, or corporation, hereinafter referred to as "prime contractor," entering into a formal contract in excess of Two Thousand Dollars (\$2,000) with this State, any department, board or agency thereof; or any county of this State, department, board or agency thereof; or any municipality of this State, department, board or agency thereof; or any school district in this State, common or independent, or subdivision thereof; or any other governmental or quasi-governmental authority, whether specifically named herein or not, authorized under any law of this State, general or local, to enter into contractual agreements for the construction, alteration or repair of any public building or the prosecution or completion of any public work, shall be required before commencing such work to execute to the aforementioned governmental authority or authorities, as the case may be, the statutory bonds as hereinafter prescribed. Each such bond shall be executed by a corporate surety or corporate sureties duly authorized to do business in this State. In the case of contracts of the State or a department, board, or agency thereof, the aforesaid bonds shall be payable to the State and shall be approved by the Attorney General as to form. In case of all other contracts subject to this Act, the bonds shall be payable to the governmental awarding authority concerned, and shall be approved by it as to form. Any bond furnished by any prime contractor in an attempted compliance with this Act shall be treated and construed as in conformity with the requirements of this Act as to rights created, limitations thereon, and remedies provided.

(a) A Performance Bond in the amount of the contract conditioned upon the faithful performance of the work in accordance with the plans, specifications, and contract documents. Said bond shall be solely for the protection of the State or the governmental authority awarding the contract, as the case may be.

(b) A Payment Bond, in the amount of the contract, solely for the protection of all claimants supplying labor and material as hereinafter defined, in the prosecution of the work provided for in said contract, for the use of each such claimant.

**Rights of persons furnishing labor or material. Notice required**

B. Every claimant who has furnished labor or material in the prosecution of the work provided for in such contract in which a Payment Bond is furnished as required hereinabove, and who has not been paid in full therefor, shall have the right, if his claim remains unpaid after the expiration of sixty (60) days after the filing of the claim as herein required, to sue the principal and the surety or sureties on the Payment Bond jointly or severally for the amount due on the balance thereof unpaid at the time of filing the claim or of the institution of the suit; provided:

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

(a) Notices Required for Unpaid Bills, other than notices solely for Retainages as hereinafter described.

Such claimant shall have given within ninety (90) days after the 10th day of the month next following each month in which the labor was done or performed, in whole or in part, or material was delivered, in whole or in part, for which such claim is made, written notices of the claim by certified or registered mail, addressed to the prime contractor at his last known business address, or at his residence, and to the surety or sureties. Such notices shall be accompanied by a sworn statement of account stating in substance that the amount claimed is just and correct and that all just and lawful offsets, payments, and credits known to the affiant have been allowed. Such statement of account shall include therein the amount of any retainage or retainages applicable to the account that have not become due by virtue of terms of the contract between the claimant and the prime contractor or between the claimant and a subcontractor. When the claim is based on a written agreement, the claimant shall have the option to enclose, with the sworn statement of account, as such notice a true copy of such agreement and advising completion or value of partial completion of same.

(1) When no written contract or written agreement exists between the claimant and the prime contractor or between the claimant and a subcontractor, except as provided in subparagraph B (a) (2) hereof, such notices shall state the name of the party for whom the labor was done or performed or to whom the material was delivered, and the approximate dates of performance and delivery, and describing the labor or materials or both in such a manner so as to reasonably identify the said labor or materials or both and amount due therefor. The claimant shall generally itemize his claim and shall accompany same with true copies of documents, invoices or orders sufficient to reasonably identify the labor performed or material delivered for which claim is being made. Such documents and copies thereof shall have thereon a reasonable identification or description of the job and destination of delivery.

(2) When the claim is for multiple items of labor or material or both to be paid for on a lump sum basis such notice shall state the name of the party for whom the labor was done or performed or to whom the material was delivered, the amount of the contract and whether written or oral, the amount claimed and the approximate date or dates of performance or delivery or both and describing the labor or materials or both in such a manner so as to reasonably identify the said labor or materials.

(3) When a claimant who is a subcontractor or materialman to the prime contractor or to a subcontractor has a written unit price agreement, completed or partially completed, such notices shall be sufficient if such claimant shall attach to his sworn statement of account a list of units and unit prices as fixed by said contract and a statement of such units completed and of such units partially completed.

(b) Additional Notices Required of Claimants Who Do Not Have a Direct Contractual Relationship With the Prime Contractor.

Excepting an individual mechanic or laborer who is a claimant for wages, no right of action shall be legally enforceable, nor shall any suit be maintained under any provision of this Act by a claimant not having a direct contractual relationship with any prime contractor for material furnished or labor performed under the provisions of this Act unless such claimant has complied with those of the following additional requirements which are applicable to the claim:

(1) If any agreements exist between the claimant and any subcontractors by which payments are not to be made in full therefor in the



month next following each month in which the labor was performed or the materials were delivered or both, such claimant shall have given written notice by certified or registered mail addressed to the prime contractor at his last known business address, or at his residence, within thirty-six (36) days after the 10th day of the month next following the commencement of the delivery of materials or the performance of labor that there has been agreed upon between the claimant and such subcontractors such retention of funds. Such notice shall indicate generally the nature of such retainage.

(2) Such Claimant shall have given written notice by certified or registered mail as described in the preceding subparagraph B(b) (1) to the prime contractor within thirty-six (36) days after the 10th day of the month next following each month in which the labor was done or performed, in whole or in part, or material delivered, in whole or in part, that payment therefor has not been received. A copy of the statement sent to the subcontractor shall suffice as such notice.

(3) If the basis of the claim is an undelivered specially fabricated item or items as described in paragraph C(b) (2), such claimant shall have given written notice by certified or registered mail as described in the preceding subparagraph B(b) (1) to the prime contractor within forty-five (45) days after the receipt and acceptance of an order for hereinafter described specially fabricated material that such an order has been received and accepted.

(c) Notices of Unpaid Retainages Required. Retainage Defined.

Retainage as referred to in this Act is defined as any amount representing any part of the contract payments which are not required to be paid to the claimant within the month next following the month in which the labor was done or material furnished or both.

When a contract between the prime contractor and such claimant, or between a subcontractor and such claimant provides for retainage, such claimant shall have given, on or before ninety (90) days after the final completion of the contract between the prime contractor and the awarding authority, written notices of the claim for such retainage by certified or registered mail to the prime contractor at his last known business address, or at his home address, and to the surety or sureties. Such notices shall consist of a statement showing the amount of the contract, the amount paid, if any, and the balance outstanding. No claim for such retainage contained in such notices shall be valid to an extent greater than the amount specified in the contract between the prime contractor or the subcontractor and the claimant to be retained, and in no event greater than ten per cent (10%) of such contract. However, such notices shall not be required if the amount claimed is part of a prior claim which has been made as heretofore described.

Claimant defined

C. A claimant is defined as anyone having direct contractual relationship with the Prime Contractor, or with a subcontractor, to perform the work or a part of the work, or to furnish labor or materials or both as a part of the work as follows:

(a) Labor is to be construed to mean labor used in the direct prosecution of the work.

(b) Material is to be construed to mean any part or all of the following:

(1) Material incorporated in the work, or consumed in the direct prosecution of the work, or ordered and delivered for such incorporation or such consumption.

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

(2) Material specially fabricated on the order of the Prime Contractor or of a subcontractor for use as a component part of said public building, or other public work so as to be reasonably unsuitable for use elsewhere, even though such material has not been delivered or incorporated into the public building or public work, but in such event only to the extent of its reasonable costs, less its fair salvage value, and only to the extent that such specially fabricated material is in conformity and compliance with the plans, specifications, and contract documents for same.

(3) Rent at a reasonable rate and actual running repairs at a reasonable cost for construction equipment, used in the direct prosecution of the work at the project site, or reasonably required and delivered for such use.

(4) Power, water, fuel and lubricants, when such items have been consumed or ordered and delivered for consumption, in the direct prosecution of the work.

(c) A subcontractor is any person or persons, firm or corporation who has furnished labor or materials or both as defined above to fulfill an obligation to the prime contractor or to a subcontractor to perform and install all or part of the work required by the prime contract.

A subcontractor shall have a claim, but such claim, including previous payments however, shall not exceed that proportion of the subcontract price which the work done bears to the total of the work covered by the subcontract.

(d) When a claim is assigned to a third party then and in that event such third party shall stand in the same position as a claimant, provided the notices required in this Act are given.

#### Penalty for fraudulent claims

D. Any person who shall willfully file a false and fraudulent claim hereunder shall be subject to the penalties for false swearing.

#### Termination of contract

E. In the event any contractor, who shall have furnished the bonds provided in this Statute, shall abandon performance of his contract or the awarding authority shall lawfully terminate his right to proceed with performance thereof because of a default or defaults on his part, no further proceeds of the contract shall be payable to him unless and until all costs of completion of the work shall have been paid by him. Any balance remaining shall be payable to him or his surety as their interest may appear, as may be established by agreement or judgment of a court of competent jurisdiction.

#### Copy of bonds to be furnished

F. The contracting authority is authorized and directed to furnish to any person making application therefor who submits an affidavit that he has supplied labor, rented equipment, or materials for such work, or that he has entered into a contract for specially fabricated material, and payment therefor has not been made, or that he is being sued on any such bond, a certified copy of such payment bond and the contract for which it was given, which copy shall be prima facie evidence of the contents, execution and delivery of the original. Applicants shall pay for such certified copies such reasonable fees as the contracting authority may fix to cover the actual cost of preparation thereof.

## Venue

G. All suits instituted under the provisions of this Act shall be brought in a court of competent jurisdiction in the county in which the project or work, or any part thereof, is situated. No suit shall be instituted on the performance bond after the expiration of one (1) year after the date of final completion of such contract. No suit shall be instituted by a claimant on the payment bond after the expiration of one (1) year after the date suit may be brought thereon under the provisions of Section 1.B. hereof. The State of Texas shall not be liable for the payment of any cost or the expenses of any suit instituted by any party or parties on the payment bond. As amended Acts 1959, 56th Leg., p. 155, ch. 93, § 1.

Emergency. Effective April 27, 1959.

Section 4 of the amendatory Act of 1959 contained a severability clause.

Arts. 5161-5164. Repealed. Acts 1959, 56th Leg., p. 155, ch. 93, § 3.  
Eff. April 27, 1959

Subject matter is now covered by art. 5160.

Acts 1959, 56th Leg., ch. 93, p. 155, § 3, also provided that the rights, duties, and obligations of parties arising under or in-

cidental to bonds executed prior to the effective date of this Act shall continue to be governed by the law heretofore applicable to bonds for public works.

## CHAPTER TEN—INDUSTRIAL COMMISSION

Art. 5183. Appointment of members; qualifications; terms

There is hereby created an Industrial Commission, composed of nine members, each of whom shall be from different geographical areas of the state, two of whom shall be employers of labor, two of whom shall be employees or laborers, and five of whom shall be from the general public. The members of this commission shall be appointed by the Governor with the advice and consent of the Senate, such appointments to be made bi-annually on or before February 15 of odd-numbered years. The term of office of each member shall be six years, except that in making the first appointments the Governor shall appoint three members for terms of two years each, three members for terms of four years each, and three members for terms of six years each, so that the terms of three members shall expire every two years. Vacancies occurring in the commission shall be filled by appointment of the Governor for the unexpired term. As amended Acts 1959, 56th Leg., p. 702, ch. 322, § 1.

Emergency. Effective May 30, 1959.

Art. 5190½. Additional duties of Commission

(a) Additional duties of the Commission in addition to its other duties, the State Industrial Commission is hereby authorized to plan, organize and operate a program for attracting and locating new industries in the State of Texas.

(b) The Industrial Commission may accept contributions from private sources, all of which may be deposited in a bank or banks to be used at the discretion of the Commission in compliance with the wishes of the donors. All moneys in the State Treasury at the time of enactment of this Act which have been donated to the Commission may be withdrawn from the State Treasury and deposited in like accord, so as to free these funds for use by the Commission in accord with the donor's desires, and such

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funds are hereby appropriated for such purposes. Added Acts 1957, 55th Leg., p. 782, ch. 319, § 1, as amended Acts 1959, 56th Leg., p. 431, ch. 193, § 5.

Effective 90 days after May 12, 1959,  
date of adjournment.

## CHAPTER FIFTEEN—INSPECTION OF STEAM BOILERS

### Article 5221c. Inspection and inspectors

#### Definitions

Sec. 1. The following terms as used in this Act shall be construed as follows:

“Commissioner” as used herein shall mean the Commissioner of the Bureau of Labor Statistics of the State of Texas;

“Inspector” as used herein shall mean the inspector of steam boilers appointed under the provisions of this Act;

“Deputy” as used herein shall mean any deputy inspector of boilers appointed under the provisions of this Act;

“Boiler” as used herein shall mean any vessel used for generating steam for power or heating purposes;

“Low Pressure Heating Boiler” as used herein shall mean a boiler operated at pressures not exceeding 15 lbs. per sq. in. gauge steam or at pressures not exceeding 160 lbs. per sq. in. gauge and temperatures not exceeding 250° F. for water;

“Owner or User” as used herein shall mean any person, firm or corporation owning or operating, or in charge of or in control of any boiler as herein defined;

“Safety device” as used herein shall mean any appurtenance attached to any boiler for the purpose of diminishing the danger of accidents;

“Code of Rules” as used herein shall mean the standard code of rules promulgated and adopted by the Commissioner under the provisions of this Act;

Unless otherwise specified, where the term “boiler” is used herein, it shall include “Low Pressure Heating Boilers.” As amended Acts 1959, 56th Leg., p. 947, ch. 440, § 1.

Emergency. Effective May 30, 1959.

#### Registration of boilers; certificate of operation; injunction against operation of unsafe boiler

Sec. 2. No boiler or low pressure heating boiler, unless otherwise specifically exempted in this Act, shall be operated within the State of Texas unless such boiler has been registered with the Bureau of Labor Statistics and there shall have been issued a Certificate of Operation for such boiler, as hereinafter provided for, and such Certificate of Operation shall remain in full force and effect until expiration unless cancelled for cause by the Commissioner; such Certificate of Operation shall be placed under glass in a conspicuous place on or near the boiler for which it is issued; and no prosecution shall be maintained where the issuance of or the renewal for such Certificate of Operation shall have been requested and shall remain unacted upon; provided, however, if the operation of such boiler without such Certificate of Operation shall constitute a serious menace to the life and safety of any person or persons in or about the premises, the Commissioner or the inspector of boilers or any deputy inspector as hereinafter provided for, shall apply to the District Court in

a suit brought by either the Attorney General of the State, or any District or County Attorney, in the county in which such boiler is located, for an injunction restraining the operation of said boiler until the unsafe condition restraining its use shall be corrected and a Certificate of Operation issued. In all such cases it shall not be necessary for the attorney bringing the suit to verify the pleadings or for the State to execute a bond as a condition precedent to the issuing of any injunction or restraining order hereunder. The affidavit of the Commissioner that no application for or no Certificate of Operation exists for such boiler, and the affidavit of any inspector or deputy inspector that its operation constitutes a menace to the life and safety of any person or persons in or about the premises, shall be sufficient proof to warrant the immediate granting of a temporary restraining order. As amended Acts 1959, 56th Leg., p. 947, ch. 440, § 2.

Emergency. Effective May 30, 1959.

#### Exemptions from act

Sec. 3. The following boilers and low pressure heating boilers are exempt from the provisions of this Act:

1. Boilers and low pressure heating boilers under Federal control and stationary boilers at round houses, pumping stations and depots of railway companies under the supervision or inspection of the Superintendent of Motive Power of such railway companies;

2. Low pressure heating boilers on which pressure does not exceed 15 lbs. per sq. in. gauge steam or at pressures not exceeding 160 lbs. per sq. in. gauge and temperatures not exceeding 250° F. for water, except where such boilers are located in public or private schools, colleges, universities, or county courthouses;

3. Automobile boilers and boilers on road motor vehicles;

4. Boilers and low pressure heating boilers used exclusively for agricultural purposes;

5. Low pressure heating boilers for heating in buildings occupied solely for residence purposes with accommodations not to exceed four (4) families;

6. Boilers and low pressure heating boilers used for cotton gins. As amended Acts 1955, 54th Leg., p. 445, ch. 121, § 1; Acts 1959, 56th Leg., p. 947, ch. 440, § 3.

Emergency. Effective May 30, 1959.

## TITLE 86—LANDS—PUBLIC

## CHAPTER ONE—ADMINISTRATION

Art. 5254a. Revision and compilation of abstracts of patented, titled and surveyed land

Section 1. The Commissioner of the General Land Office shall prepare a revision and compilation of the various volumes of the abstracts of patented, titled, and surveyed land, which have heretofore been made by this office. The various counties of the state shall be apportioned into appropriate districts not to exceed eight (8) in number for the purpose of revising and compiling said abstracts, and all of the abstracts of each particular district shall be compiled into a separate volume. The Commissioner shall be authorized to distribute to those officers of the state requiring its use and who have not heretofore received a set, one complete set of abstract volumes of patented, titled and surveyed lands in this state, and shall have the authority to sell the surplus volumes to persons applying for them at a price not less than their cost to the state. All moneys so received from the sale of such surplus volumes shall be deposited in the General Revenue Fund of the state. As amended Acts 1959, 56th Leg., p. 535, ch. 238, § 1.

Emergency. Effective May 26, 1959.

## CHAPTER THREE—SURFACE AND TIMBER RIGHTS

## 4. EASEMENTS

Art.

5337—2. Execution in favor of Nueces County Water Control and Improvement District No. 4 for water supply [New].

## 4. EASEMENTS

Art. 5337—2. Execution in favor of Nueces County Water Control and Improvement District No. 4 for water supply

Section 1. The Commissioner of the General Land Office is hereby authorized and empowered, acting for and on behalf of the State of Texas, to execute any and all grants of easements in, on, and across all unsold Public Free School Lands, and in, on, and across all islands, salt water lakes, bays, inlets, marshes, and reefs owned by the state within the tide-water limits, and in, on, and across that portion of the Gulf of Mexico within the jurisdiction of Texas, to Nueces County Water Control and Improvement District Number 4 for right-of-ways for pipe lines and for the installation of all works, facilities, and appliances, in any and all manners incident to, helpful or necessary for securing, storing, processing, treating, transporting, and selling an adequate supply of fresh water; provided, however, said Nueces County Water Control and Improvement District Number 4 shall pay the sum of Ten Dollars (\$10.00) as consideration for the granting of each easement.

Sec. 2. The Commissioner of the General Land Office may grant the easements provided in Section 1 hereof for such term and shall cover

only such area which in the judgment of the Commissioner may be required to carry out the purposes for which said District was created, and, if he deems it necessary, the Commissioner of the General Land Office may grant such easements perpetually.

Sec. 3. During the existence of the easements authorized and granted pursuant hereto the officers and employees, contractors and sub-contractors of the Nueces County Water Control and Improvement District Number 4 are hereby authorized to go in and upon the lands described herein to construct such pipe lines and to install all works, facilities, appliances, and to repair and to remove same from time to time.

Sec. 4. All easements granted under Section 1 of this Act shall be on forms approved by the Attorney General.

Sec. 5. All income received by the Land Commissioner under this Act from Public School Lands shall be credited to the Available School Fund.

Sec. 6. The powers and authority herein conferred and vested in the Commissioner of the General Land Office shall be cumulative of all powers and authority heretofore and hereafter vested in the Commissioner of the General Land Office under the Constitution and laws of this state. Acts 1959, 56th Leg., p. 688, ch. 314.

Emergency. Effective May 30, 1959.

## CHAPTER SEVEN—GENERAL PROVISIONS

Art.

5415d. State beaches; right of public to free and unrestricted use and enjoyment [New].

Art. 5415d. State beaches; right of public to free and unrestricted use and enjoyment

### Declaration of policy

Section 1. It is hereby declared and affirmed to be the public policy of this state that the public, individually and collectively, shall have the free and unrestricted right of ingress and egress to and from the state-owned beaches bordering on the seaward shore of the Gulf of Mexico, or such larger area extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico, in the event the public has acquired a right of use or easement to or over such area by prescription, dedication, or has retained a right by virtue of continuous right in the public.

It shall be an offense against the public policy of this state for any person, firm, corporation, association or other legal entity to create, erect or construct any obstruction, barrier, or restraint of any nature whatsoever which would interfere with the free and unrestricted right of the public, individually and collectively, to enter or to leave any state-owned beach bordering on the seaward shore of the Gulf of Mexico, or such larger area, extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico, in the event the public has acquired a right of use or easement to or over such area by prescription, dedication, or has retained a right by virtue of continuous right in the public.

It shall be an offense against the public policy of this state for any person, firm, corporation, association, or other legal entity to create, erect, or construct any obstruction, barrier or restraint which would interfere

with the free and unrestricted right of the public, individually and collectively to the lawful and legal use of, any property abutting upon or contiguous to the state-owned beach bordering on the seaward shore of the Gulf of Mexico upon which the public has acquired a prescriptive right.

Be it provided, however, that nothing in this Act shall prevent any agency, department, institution, subdivision or instrumentality of this state or of the federal government from erecting or maintaining any groin, seawall, barrier, pass, channel, jetty or other structure as an aid to navigation, protection of the shore, fishing, safety or other lawful purpose authorized by the Constitution or laws of this state or of the United States.

The requirements of free and unrestricted rights of ingress and egress over areas landward of the line of vegetation shall be deemed to be fully satisfied by access roads or ways, now existing and available to the public, or which by or with the approval of any governmental authority having jurisdiction, may be provided in the future.

Be it provided further, that nothing in this Act shall be construed as in any way affecting the title of the owners of land adjacent to any state-owned beach bordering on the seaward shore of the Gulf of Mexico, or to the continuation of fences for the retention of livestock across sections of beach which are not accessible to motor vehicular traffic by public road or by beach.

Be it provided further, that none of the provisions of this Act shall apply to the beaches on those islands or peninsulas that are not accessible by a public road or ferry facility, so long as such condition shall exist.

**Actions; prima facie evidence of right of user and prescriptive easement in public**

Sec. 2. In any action brought or defended under this Act or whose determination is affected by this Act a showing that the area in question is embraced within the area from mean low tide to the line of vegetation shall be prima facie evidence that:

(1) the title of the littoral owner does not include the right to prevent the public from using the area for ingress and egress to the sea;

(2) there has been imposed upon the area subject to proof of easement a prescriptive right or easement in favor of the public for ingress and egress to the sea.

**Definitions**

Sec. 3. a. The term "line of vegetation" means the extreme seaward boundary of natural vegetation which spreads continuously inland. In any area where there is no clearly marked vegetation line (as, for instance, a line immediately behind well-defined dunes or mounds of sand and at a point where vegetation begins) recourse shall be had to the nearest clearly marked line of vegetation on each side of such unmarked area to determine the elevation reached by the highest waves of the Gulf. The "line of vegetation" for the unmarked area shall be the line of constant elevation connecting the two clearly marked lines of vegetation on each side. In the event the elevation of the two points on each side of the area are not the same, then the extension defining the line reached by the highest waves of the Gulf shall be the average elevation as between the two points, provided, however, that where there is no clearly marked line of vegetation, such extended line shall in no event extend inland further than two hundred (200) feet from the seaward line of mean low tide. The "line of vegetation" shall not be affected by the occasional sprigs of salt grass upon the mounds or dunes, or seaward from them, and



shall not be affected by artificial fill, the addition or removal of turf, or by other artificial changes in the natural vegetation of the area. Where such changes have been made, and thus the vegetation line has been obliterated or has been created artificially, then the line of vegetation shall be determined in the same manner as in those areas where there is otherwise no clearly marked "line of vegetation"; however, where there is a vegetation line consistently following a line more than two hundred (200) feet from the seaward line of mean low tide, this two hundred (200) foot line shall constitute the landward boundary of the area subject to public easement until such time as a final court adjudication shall establish this line in another place.

b. The term "highest waves" means the highest swell of the surf with such regularity that vegetation is prevented, and does not refer to the extraordinary waves which temporarily extend above the line of vegetation during storms and hurricanes.

c. The term "beach" as used herein means that area subject to public use and easement as defined in Section 1.

d. "Person" as used herein includes natural persons, corporations and associations.

e. "Littoral owner" means the owner of land adjacent to the shore and includes anyone acting under the littoral owner's authority.

#### Construction of term "public beaches"

Sec. 4. Nothing herein shall in any way reduce, limit, construct or vitiate the definition of public beaches as defined from time immemorial in law and custom.

#### Injunction; protection of rights of ingress and egress

Sec. 5. The Attorney General, any County Attorney, District Attorney, or Criminal District Attorney of the State of Texas is hereby authorized and empowered, and it shall be his, or their duty to file in the District Court of Travis County, Texas, or the county wherein such property is situated, actions seeking either temporary or permanent court orders or injunctions to remove any obstruction or barrier, or prohibit any restraint or interference, restricting the right of the public, individually or collectively, to free and unrestricted ingress and egress to and from the state-owned beaches, or such larger area, extending from the line of mean low tide to the line of vegetation, in the event the public has acquired a right to use or easement to or over such area by prescription, dedication, or has retained a right by virtue of continuous right in the public, or any property abutting upon or contiguous to the state-owned beach bordering on the Gulf of Mexico upon which the public has acquired a prescriptive right, and in such proceedings, the Attorney General, County Attorney, District Attorney, or Criminal District Attorney, shall also be empowered to bring an action seeking recovery of the costs of removing any obstruction or barrier if the same be removed by public authorities pursuant to any order of such court.

#### Declaratory judgment suits

Sec. 6. Any littoral owner whose rights may be determined or affected by this Act shall be permitted to bring suit for a declaratory judgment against the State of Texas to try such issue or issues. Service of citation in such cases may be had by serving the Attorney General of Texas.

**Study committee**

Sec. 7. Because of certain problems peculiar to the various beaches of Texas, a study committee is hereby authorized to study the development of those beaches. The committee shall be composed of three (3) Representatives to be appointed by the Speaker of the House of Representatives, three (3) Senators to be appointed by the Lieutenant Governor of the state, and, as ex officio members, the Land Commissioner of the State of Texas, or a representative appointed by such Land Commissioner, the Chief Engineer of the Highway Department of the State of Texas, or a representative appointed by such Chief Engineer, and a representative of the Attorney General to be appointed by the Attorney General. The expense incurred by the legislative members of the Committee in performing their duty shall be payable one-half out of the Contingent Expense Fund of the House and one-half out of the Contingent Expense Fund of the Senate. Such interim committee shall examine into the special conditions prevailing as to the shore line in the various areas, and shall file its report to the Legislature, whether in Special or General Session, at the earliest time compatible with the performance of its duties. The report shall include recommendations for legislation, including the following subjects:

a. the most practical method of procuring the right-of-way necessary for construction of essential parallel highways and for vehicular parking areas (to facilitate access to the beach) all to be situated landward and above the beach;

b. method of procuring easements for egress and ingress between such parking areas and the beach;

c. procedure for negotiation and execution of cooperative agreements between the state and affected landowners for acquisition by gift or purchase of such rights-of-way and easements;

d. recognition of rights in such landowners to construct works, including groins, for the protection of their property and meeting the standards to be prescribed in such legislation;

e. method of negotiations with landowners for additional easements or deeds for park areas adjacent to the beach, for the use and pleasure of the public, provided such lands or easements can be obtained without cost to the state;

f. any change necessary to bring general legislation into conformity with the fixed procedures applicable to National Seashore Areas, to the extent that lands along the coast may be designated to a National Seashore Area; and

g. such other related matters as in the opinion of the interim committee should be included in such report so as to facilitate the development of Texas' beaches as public recreational areas and to further their development as a tourist attraction.

**Power of commissioners court; rules and regulations;  
violations; penalties**

Sec. 8. The Commissioners Court of any county shall have, and is hereby granted, the authority to regulate motor vehicular traffic and the littering of such state-owned beaches, or such larger area, extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico, in the event the public has acquired a right of use or easement to or over such area by prescription, dedication, or has retained a right by virtue of continuous right in the public, within the limits of said county. Such regulations may include the speed of motor vehicles in accord-

ance with existing state laws and rules or regulations promulgated by the Texas Highway Commission, and the zoning of designated areas for non-vehicular traffic. The Commissioners Court may declare the violation of such regulations to be and the same shall be considered as a violation of this Act, and the Commissioners Court may prescribe civil penalties therefor not to exceed a penalty in the payment of Two Hundred Dollars (\$200.00) in money.

The right of the public to use the public beaches covered in this Act shall remain inviolate subject to the rules and regulations promulgated by the Commissioners Court having jurisdiction. Acts 1959, 56th Leg., 2nd C.S., p. 108, ch. 19.

Effective 90 days after July 16, 1959,  
date of adjournment.

Section 9 of the Act of 1959, contained a  
severability provision.

## TITLE 89—LIBRARY AND HISTORICAL COMMISSION

Art.

5441b. Disposition of valueless records  
[New].

### Art. 5441b. Disposition of valueless records

Section 1. The State Librarian of the State of Texas is hereby authorized to transfer, destroy or otherwise dispose of any records of the State of Texas consigned by law to his custody that are more than ten (10) years old and which the State Librarian shall determine to be valueless, or of no further use, to the State of Texas as official records. Provided, however, none of such records shall be disposed of in any manner unless the State Comptroller, the State Auditor and the Attorney General of the State of Texas shall first have agreed with the State Librarian that the preservation of any such records are no longer necessary as evidence and will serve no useful purpose in the future efficient operation of the State Government. All such records disposed of, as agreed upon, shall be generally listed and referred to and such list shall be subscribed to by all of said Officials showing their consent to such disposition.

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

Sec. 3. Any such records held to be no longer needed for the operation of the State Government or those replaced by microfilm copies may nevertheless be transferred to the Archives Division of the Texas State Library if the State Librarian deems them to be of historical value. Acts 1959, 56th Leg., p. 1083, ch. 494.

Emergency. Effective June 1, 1959.

## TITLE 90—LIENS

Chap.

Art.

6A. Uniform Trusts Receipts Act [New]

5499a—51

CHAPTER TWO—MECHANICS, CONTRACTORS  
AND MATERIAL MEN

## Art. 5472a. Lien for material furnished public contractor; notice

Section 1. Any person, firm, corporation, or trust estate, furnishing any material, apparatus, fixtures, machinery, or labor to any contractor under a prime contract where such prime contract does not exceed the sum of Two Thousand Dollars (\$2,000) for any public improvements in this State, shall have a lien on the moneys, or bonds, or warrants due or to become due to such contractor for such improvements provided such person, firm, corporation, trust estate, or stock association shall before any payment is made to such contractor, notify in writing the officials of the state, county, town, or municipality whose duty it is to pay such contractor of his claim, such written notice to provide and be given within the prescribed time as follows:

(a) Such notice to be given by certified or registered mail, with a copy to the contractor at his last known business address, or at his residence, and given within thirty (30) days after the 10th of the month next following each month in which labor, material, apparatus, fixtures, or machinery were furnished for such lien is claimed.

(b) Such notice, whether based on a written or oral agreement shall state the amount claimed, the name of the party to whom such was delivered or for whom it was performed, with dates and place of delivery or performance and describing the same in such manner as to reasonably identify said material, apparatus, fixtures, machinery, or labor and the amount due therefor, and identify the project where material was delivered or labor performed.

(c) Such notice shall be accompanied by a statement under oath stating that the amount claimed is just and correct and that all payments, lawful offsets, and credits known to the affiant have been allowed.

(d) Any person who shall file a willfully false and fraudulent notice and statement shall be subject to the penalties for false swearing. As amended Acts 1959, 56th Leg., p. 155, ch. 93, § 2.

Emergency. Effective April 27, 1959.

## CHAPTER SIX—CHATTEL MORTGAGES

Art. 5499a—1 to 5499a—50. Reserved for future legislation

## CHAPTER SIX—A—UNIFORM TRUSTS RECEIPTS ACT [NEW]

Art.

5499a—51. Uniform Trust Receipts Act.

Markets and warehouse corporations, see art. 5578 et seq.

Warehouse Receipts Act, see art. 5612 et seq.

## Art. 5499a—51. Uniform Trust Receipts Act

## Definitions

Section 1. In this Act, unless the context or subject matter otherwise requires:

Buyer in the ordinary course of trade" means a person to whom goods are sold and delivered for new value and who acts in good faith and without actual knowledge of any limitation on the trustee's liberty of sale, including one who takes by conditional sale or under a pre-existing mercantile contract with the trustee to buy the goods delivered, or like goods, for cash or on credit. "Buyer in the ordinary course of trade" does not include a pledgee, a mortgagee, a lienor, or a transferee in bulk.

Document" means any documents of title to goods.

Entruster" means the person who has directly or by agent taken a security interest in goods, documents or instruments under a trust receipt transaction, and any successor in interest of such person. A person in the business of selling goods or instruments for profit, who at the outset of the transaction has, as against the buyer, general property in such goods or instruments, and who sells the same to the buyer on credit, retaining title or other security interest under a purchase money mortgage or conditional sales contract or otherwise, is excluded.

Goods" means any chattels personal other than: money, things in action, or things so affixed to land as to become a part thereof.

Instrument" means:

(a) any negotiable instrument as defined in the Uniform Negotiable Instruments Law and amendments thereto; or

(b) any certificate of stock, or bond or debenture for the payment of money issued by a public or private corporation as part of a series; or

(c) any interim deposit, or participation certificate or receipt, or other credit or investment instrument of a sort marketed in the ordinary course of business or finance, of which the trustee, after the trust receipt transaction, appears by virtue of possession and the face of the instrument to be the owner. "Instrument" does not include any document of title to goods.

Lien creditor" means any creditor who has acquired a specific lien on the goods, documents or instruments by attachment, levy, or by any other similar operation of law or judicial process, including a distraining landlord.

New value" includes new advances or loans made, or new obligations incurred, or the release or surrender of a valid and existing security interest, or the release of a claim to proceeds under Section 10; but "new value" shall not be construed to include extensions or renewals of existing obligations of the trustee, nor obligations substituted for such existing obligations.

Person" means, as the case may be, an individual, trustee, receiver or other fiduciary, partnership, corporation, business trust, or other association, and two or more persons having a joint or common interest.

Possession," as used in this Act with reference to possession taken or retained by the entruster, means actual possession of goods, documents or instruments, or, in the case of goods, such constructive possession as, by means of tags or signs or other outward marks placed and remaining in conspicuous places, may reasonably be expected in fact to indicate to the third party in question that the entruster has control over or interest in the goods.

Purchase" means taking by sale, conditional sale, lease, mortgage, or pledge, legal or equitable.

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

"Purchaser" means any person taking by purchase. A pledgee, mortgagee or other claimant of a security interest created by contract is, insofar as concerns his specific security, a purchaser and not a creditor.

"Security interest" means a property interest in goods, documents or instruments, limited in extent to securing performance of some obligation of the trustee or of some third person to the entruster, and includes the interest of a pledgee, and title, whether or not expressed to be absolute, whenever such title is in substance taken or retained for security only.

"Transferee in bulk" means a mortgagee or pledgee or a buyer of the trustee's business substantially as a whole.

"Trustee" means the person having or taking possession of goods, documents or instruments under a trust receipt transaction, and any successor in interest of such person. The use of the word "Trustee" herein shall not be interpreted or construed to imply the existence of a trust or any right or duty of a trustee in the sense of equity jurisprudence other than as provided by this Act.

"Value" means any consideration sufficient to support a simple contract. An antecedent or pre-existing claim, whether for money or not, and whether against the transferor or against another person, constitutes value where goods, documents or instruments are taken either in satisfaction thereof or as security therefor.

#### What Constitutes Trust Receipt Transaction and Trust Receipt

Sec. 2. 1. A trust receipt within the meaning of this Act is any transaction to which an entruster and a trustee are parties, for one of the purposes set forth in Subsection 3, whereby:

(a) the entruster or any third person delivers to the trustee goods, documents or instruments in which the entruster (i) prior to the transaction has, or for new value (ii) by the transaction acquires or (iii) as the result thereof is to acquire promptly, a security interest; or

(b) the entruster gives new value in reliance upon the transfer by the trustee to such entruster of a security interest in instruments which are actually exhibited to such entruster, or to his agent in that behalf, at a place of business of either entruster or agent, but possession of which is retained by the trustee; provided that the delivery under paragraph (a) or the giving of new value under paragraph (b) either:

(i) be against the signing and delivery by the trustee of a writing designating the goods, documents or instruments concerned, and reciting that a security interest therein remains in or will remain in, or has passed to or will pass to, the entruster; or

(ii) be pursuant to a prior or concurrent written and signed agreement of the trustee to give such a writing.

The security interest of the entruster may be derived from the trustee or from any other person, and by pledge or by transfer of title or otherwise

If the trustee's rights in the goods, documents or instruments are subject to a prior trust receipt transaction, or to a prior equitable pledge, Section 9 and Section 3, respectively, of this Act, determine the priorities.

2. A writing such as is described in Subsection 1, paragraph (i), signed by the trustee, and given in or pursuant to a transaction, is designated in this Act as a "trust receipt." No further formality of execution or authentication shall be necessary to the validity of a trust receipt.

3. A transaction shall not be deemed a trust receipt transaction unless the possession of the trustee thereunder is for a purpose substantially equivalent to any one of the following:

(a) in the case of goods, documents or instruments, for the purpose of selling or exchanging them, or of procuring their sale or exchange; or

(b) in the case of goods or documents, for the purpose of manufacturing or processing the goods delivered or covered by the documents, with the purpose of ultimate sale, or for the purpose of loading, unloading, storing, shipping, transshipping, or otherwise dealing with them in a manner preliminary to or necessary to their sale; or

(c) in the case of instruments, for the purpose of delivering them to a principal, under whom the trustee is holding the, or for consummation of some transaction involving delivery to a depository or registrar, or for their presentation, collection or renewal.

**Attempted Creation or Continuance of Pledge Without  
Delivery or Retention of Possession**

Sec. 3. 1. An attempted pledge or agreement to pledge not accompanied by delivery of possession, which does not fulfill the requirements of a trust receipt transaction, shall be valid as against creditors of the pledgor only as follows:

(a) to the extent that new value is given by the pledgee in reliance thereon, such pledge or agreement to pledge shall be valid as against all creditors with or without notice, for ten days from the time the new value is given;

(b) to the extent that the value given by the pledgee is not new value, and in the case of new value after the lapse of ten days from the giving thereof, the pledge shall have validity as against lien creditors without notice, who become such as prescribed in Section 8, only as of the time the pledgee takes possession, and without relation back.

2. Purchasers (including entrusters) for value and without notice of the pledgee's interest shall take free of any such pledge or agreement to pledge unless, prior to the purchase, it has been perfected by possession taken.

3. Where, under circumstances not constituting a trust receipt transaction, a person, for a temporary and limited purpose, delivers goods, documents, or instruments, in which he holds a pledgee's or other security interest, to the person, holding the beneficial interest therein, the transaction has like effect with a purported pledge for new value under this Section.

**Contract to Give Trust Receipt**

Sec. 4. 1. A contract to give a trust receipt, if in writing and signed by the trustee, shall, with reference to goods, documents or instruments thereafter delivered by the entruster to the trustee in reliance on such contract, be equivalent in all respects to a trust receipt.

2. Such a contract shall as to such goods, documents, or instruments be specifically enforceable against the trustee; but this Subsection shall not enlarge the scope of the entruster's rights against creditors of the trustee as limited by this Act.

**Validity Between Parties**

Sec. 5. Between the entruster and the trustee the terms of the trust receipt shall, save as otherwise provided by this Act, be valid and enforceable. But no provision for forfeiture of the trustee's interest shall be valid except as provided in Subsection 5 of Section 6.

**Repossession, and Entruster's Rights on Default**

Sec. 6. 1. The entruster shall be entitled as against the trustee to possession of the goods, documents or instruments on default, and as may be otherwise specified in the trust receipt.

2. An entruster entitled to possession under the terms of the trust receipt or of Subsection 1 may take such possession without legal process, whenever that is possible without breach of the peace.

3. (a) After possession taken, the entruster shall, subject to subdivision (b) and Subsection 5, hold such goods, documents or instruments with the rights and duties of a pledgee.

(b) An entruster in possession may, on or after default, give notice to the trustee of intention to sell, and may, not less than five days after the serving or sending of such notice, sell the goods, documents or instruments for the trustee's account, at public or private sale himself become a purchaser. The proceeds of any such sale, whether public or private, shall be applied (i) to the payment of the expenses thereof; (ii) to the payment of the expenses of retaking, keeping and storing the goods, documents, or instruments; (iii) to the satisfaction of the trustee's indebtedness. The trustee shall receive any surplus and shall be liable to the entruster for any deficiency. Notice of sale shall be deemed sufficiently given if in writing, and either (i) personally served on the trustee, or (ii) sent by postpaid ordinary mail to the trustee's last known business address.

(c) A purchaser in good faith and for value from an entruster in possession takes free of the trustee's interest, even in a case in which the entruster is liable to the trustee for conversion.

4. Surrender of the trustee's interest to the entruster shall be valid, on any terms upon which the trustee and the entruster may, after default, agree.

5. As to articles manufactured by style or model, the terms of the trust receipt may provide for forfeiture of the trustee's interest, at the election of the entruster, in the event of the trustee's default, against cancellation of the trustee's then remaining indebtedness; provided that in the case of the original maturity of such an indebtedness there must be cancelled not less than 80% of the purchase price to the trustee, or of the original indebtedness, whichever is greater; or, in the case of a first renewal, not less than 70%, or, in the case of a second or further renewal, not less than 60%.

**General Effect of Entruster's Filing or Taking Possession**

Sec. 7. 1. (a) If the entruster within the period of thirty days specified in Subsection 1 of Section 8, files as in this Act provided, such filing shall be effective to preserve his security interest in documents or goods against all persons, save as otherwise provided by Sections 8, 9, 10, 11, 14, and 15 of this Act.

(b) Filing after the lapse of the said period shall be valid; but in such event, save as provided in Subdivision 2(b) of Section 9, the entruster's security interest shall be deemed to be created by the trustee as of the time of such filing, without relation back, as against all persons not having notice of such interest.

2. The taking of possession by the entruster shall, so long as such possession is retained, have the effect of filing, in the case of goods or documents; and of notice of the entruster's security interest to all persons, in the case of instruments.



**Validity Against Creditors**

Sec. 8. 1. The entruster's security interest in goods, documents or instruments under the written terms of a trust receipt transaction, shall without any filing be valid as against all creditors of the trustee, with or without notice, for thirty days after delivery of the goods, documents or instruments to the trustee, and thereafter except as in this Act otherwise provided.

But where the trustee at the time of the trust receipt transaction has and retains instruments, the thirty days shall be reckoned from the time such instruments are actually shown to the entruster, or from the time that the entruster gives new value under the transaction, whichever is prior.

2. Save as provided in Subsection 1, the entruster's security interest shall be void as against lien creditors who become such after such thirty day period and without notice of such interest and before filing.

3. (a) Where a creditor secures the issuance of process which within a reasonable time after such issuance results in attachment of or levy on the goods, he is deemed to have become a lien creditor as of the date of the issuance of the process.

(b) Unless prior to the acquisition of notice by all creditors filing has occurred or possession has been taken by the entruster, (i) an assignee for the benefit of creditors, from the time of assignment; or (ii) a receiver in equity from the time of his appointment; or (iii) a trustee in bankruptcy or judicial insolvency proceedings from the time of filing of the petition in bankruptcy or judicial insolvency by or against the trustee, shall, on behalf of all creditors, stand in the position of a lien creditor without notice, without reference to whether he personally has or has not, in fact, notice of the entruster's interest.

**Limitations on Entruster's Protection Against Purchasers**

Sec. 9. 1. Purchasers of Negotiable Documents or Instruments.

(a) Nothing in this Act shall limit the rights of purchasers in good faith and for value from the trustee of negotiable instruments or negotiable documents, and purchasers taking from the trustee for value, in good faith, and by transfer in the customary manner instruments in such form as are by common practice purchased and sold as if negotiable, shall hold such instruments free of the entruster's interest; and filing under this Act shall not be deemed to constitute notice of the entruster's interest to purchasers in good faith and for value of such documents or instruments, other than transferees in bulk.

(b) The entrusting (directly, by agent, or through the intervention of a third person) of goods, documents or instruments by an entruster to a trustee, under a trust receipt transaction or a transaction falling within Section 3 of this Act, shall be equivalent to the like entrusting of any documents or instruments which the trustee may procure in substitution, or which represent the same goods or instruments or the proceeds thereof, and which the trustee negotiates to a purchaser in good faith and for value.

2. Where a purchaser from the trustee is not protected under Subsection 1 hereof, the following rules shall govern:

(a) Sales by trustee in the ordinary course of trade.

(i) Where the trustee, under the trust receipt transaction, has liberty of sale and sells to a buyer in the ordinary course of trade, whether before or after the expiration of the thirty-day period specified in Subsection 1

of Section 8 of this Act, and whether or not filing has taken place, such buyer takes free of the entruster's security interest in the goods so sold, and no filing shall constitute notice of the entruster's security interest to such a buyer.

(ii) No limitation placed by the entruster on the liberty of sale granted to the trustee shall affect a buyer in the ordinary course of trade, unless the limitation is actually known to the latter.

(b) Purchasers other than buyers in the ordinary course of trade.

In the absence of filing, the entruster's security interest in goods shall be valid, as against purchasers, save as provided in this Section; but any purchaser, not a buyer in the ordinary course of trade, who, in good faith and without notice of the entruster's security interest and before filing, either (i) gives new value before the expiration of the thirty-day period specified in Subsection 1 of Section 8; or (ii) gives value after said period, and who in either event before filing also obtains delivery of goods from a trustee shall hold the subject matter of his purchase free of the entruster's security interest; but a transferee in bulk can take only under (ii) of this Subdivision (b).

(c) Liberty of sale.

If the entruster consents to the placing of goods subject to a trust receipt transaction in the trustee's stock in trade or in his sales or exhibition rooms, or allows such goods to be so placed or kept, such consent or allowance shall have like effect as granting the trustee liberty of sale.

3. As to all cases covered by this Section the purchase of goods, documents or instruments on credit shall constitute a purchase for new value, but the entruster shall be entitled to any debt owing to the trustee and any security therefor, by reason of such purchase; except that the entruster's right shall be subject to any set-off or defense valid against the trustee and accruing before the purchaser has actual notice of the entruster's interest.

#### Entruster's Right to Proceeds

Sec. 10. Where, under the terms of the trust receipt transaction, the trustee has no liberty of sale or other disposition, or, having liberty of sale or other disposition, is to account to the entruster for the proceeds of any disposition of the goods, documents or instruments, the entruster shall be entitled, to the extent to which and as against all classes of persons as to whom his security interest was valid at the time of disposition by the trustee, as follows:

(a) to the debts described in Section 9 (3); and also

(b) to any proceeds or the value of any proceeds (whether such proceeds are identifiable or not) of the goods, documents or instruments, if said proceeds were received by the trustee within ten days prior to either application for appointment of a receiver of the trustee, or the filing of a petition in bankruptcy or judicial insolvency proceedings by or against the trustee, or demand made by the entruster for prompt accounting; and to a priority to the amount of such proceeds or value; and also

(c) to any other proceeds of the goods, documents of instruments which are identifiable, unless the provision for accounting has been waived by the entruster by words or conduct; and knowledge by the entruster of the existence of proceeds, without demand for accounting made within ten days from such knowledge, shall be deemed such a waiver.

#### Liens in Course of Business Good Against Entruster

Sec. 11. Specific liens arising out of contractual acts of the trustee with reference to the processing, warehousing, shipping or otherwise deal-

ing with specific goods in the usual course of the trustee's business preparatory to their sale shall attach against the interest of the entruster in said goods as well as against the interest of the trustee, whether or not filing has occurred under this Act; but this Section shall not obligate the entruster personally for any debt secured by such lien; nor shall it be construed to include the lien of a landlord.

**Entruster not Responsible on Sale by Trustee**

Sec. 12. An entruster holding a security interest shall not, merely by virtue of such interest or of his having given the trustee liberty of sale or other disposition, be responsible as principal or as vendor under any sale or contract to sell made by the trustee.

**Filing and Refiling Concerning Trust Receipt Transactions  
Covering Documents or Goods**

Sec. 13. 1. Any entruster undertaking or contemplating trust receipt transactions with reference to documents or goods is entitled to file with the Secretary of State a statement, signed by the entruster and the trustee, containing:

(a) a designation of the entruster and the trustee, and of the chief place of business of each within this state, if any; and if the entruster has no place of business within the state, a designation of his chief place of business outside the state; and

(b) a statement that the entruster is engaged, or expects to be engaged, in financing under trust receipt transactions the acquisition of goods by the trustee; and

(c) a description of the kind or kinds of goods covered or to be covered by such financing.

2. The following form of statement (or any other form of statement containing substantially the same information) shall suffice for the purposes of this Act:

**Statement of Trust Receipt Financing**

"The entruster, ..... whose chief place of business within this state is at ....., (or who has no place of business within this state and whose chief place of business outside this state is at ..... ) is or expects to be engaged in financing under trust receipt transactions the acquisition by the trustee, ..... whose chief place of business within this state is at ..... of goods of the following description: (coffee, silk, automobiles, or the like).

(Signed) ..... Entruster  
(Signed) ..... Trustee."

3. It shall be the duty of the filing officer to mark each statement filed with a consecutive file number, and with the date and hour of filing, and to keep such statement in a separate file; and to note and index the filing in a suitable index, indexed according to the name of the trustee and containing a notation of the trustee's chief place of business as given in the statement. The fee for such filing shall be One Dollar (\$1.00).

4. Presentation for filing of the statement described in Subsection 1, and payment of the filing fee, shall constitute filing under this Act, in favor of the entruster, as to any documents or goods falling within the description in the statement which are within one year from the date of such filing, or have been within thirty days previous to such filing, the subject matter of a trust receipt transaction between the entruster and the

trustee. In the event for any reason the entruster should release such filing before its expiration and such release shall be presented to the Secretary of State either by the trustee or entruster or otherwise, the fee for filing such release shall be One Dollar (\$1.00).

5. At any time before expiration of the validity of the filing, as specified in Subsection 4, a like statement, or an affidavit by the entruster alone, setting out the information required by Subsection 1, may be filed in like manner as the original filing. Any filing of such further statement or affidavit shall be valid in like manner and for like period as an original filing, and shall also continue the rank of the entruster's existing security interest as against all junior interests. It shall be the duty of the filing officer, to mark, file and index the further statement or affidavit in like manner as the original.

6. The Secretary of State shall be entitled to a fee of One Dollar (\$1.00) for advising any interested person with reference to any statement filed under this Section and shall be entitled to his usual fees for any certified copies or other information requested or any transcript of such records.

#### **Entruster's security interest against purchasers and creditors; limitation**

Sec. 14. As against purchasers and creditors, the entruster's security interest may extend to any obligation for which the goods, documents or instruments were security before the trust receipt transaction (and to any new value given or agreed to be given as a part of such transaction); but not, otherwise, to secure past indebtedness of the trustee; nor shall the obligation secured under any trust receipt transaction extend to obligations of the trustee to be subsequently created.

#### **Act Not Applicable to Certain Transactions**

Sec. 15. This Act shall not apply to single transactions of legal or equitable pledge, not constituting a course of business, whether such transactions be unaccompanied by delivery of possession, or involve constructive delivery, or delivery and redelivery, actual or constructive, so far as such transactions involve only an entruster who is an individual natural person, and a trustee entrusted as a fiduciary with handling investments or finances of the entruster; nor shall it apply to transactions of bailment or consignment in which the title of the bailor or consignor is not retained to secure an indebtedness to him of the bailee or consignee.

#### **Election Among Filing Statutes**

Sec. 16. As to any transaction falling within the provisions both of this Act and of any other Act requiring filing or recording, the entruster shall not be required to comply with both, but by complying with the provisions of either at his election may have the protection given by the Act complied with; except that buyers in the ordinary course of trade as described in Subsection 2 of Section 9, and lienors as described in Section 11, shall be protected as therein provided, although the compliance of the entruster be with the filing or recording requirements of another Act.

#### **Cases Not Provided For**

Sec. 17. In any case not provided for in this Act the rules of law and equity, including the law merchant, shall continue to apply to trust receipt transactions and purported pledge transactions not accompanied by delivery of possession.

**Uniformity of Interpretation**

Sec. 18. This Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the states which enact it.

**Constitutionality**

Sec. 19. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provisions or application, and to this end the provisions of this Act are declared to be severable.

**Short Title**

Sec. 20. This Act may be cited as the "Texas Uniform Trust Receipts Act."

**Inconsistent Laws Repealed**

Sec. 21. Except so far as they are applicable to trust receipt and pledge transactions entered into before this Act takes effect, all Acts or parts of Acts inconsistent with this Act are hereby repealed.

**Time and Manner of Taking Effect**

Sec. 22. This Act shall take effect January 1, 1960. Acts 1959, 56th Leg., p. 652, ch. 303.

Emergency. Effective Jan. 1, 1960.

Negotiable instruments, see arts. 5932 to 5948.

**Title of Act:**

An Act relating to Trust Receipts and Trust Receipt Transactions and to make

uniform the law with reference thereto; citing the Act as the "Texas Uniform Trust Receipts Act"; providing a savings clause; and declaring an emergency. Acts 1959, 56th Leg., p. 652, ch. 303.

## TITLE 91—LIMITATIONS

Art.  
5526b. Actions to be commenced in three  
years [New].

Art. 5526b. Actions to be commenced in three years

*Actions by carriers of property for recovery of charges*

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

*Actions against carriers of property for recovery of overcharges*

Sec. 2. For recovery of overcharges, action at law shall be begun against carriers of property for compensation or hire within three years from the time the cause of action accrues, and not after, subject to Section 3 of this Article, except that if claim for the overcharge has been presented in writing to the carrier within the three-year period of limitation said period shall be extended to include six months from the time notice in writing is given by the carrier to the claimant of disallowance of the claim, or any part or parts thereof, specified in the notice.

*Extension of period of limitation*

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

*Shipment of property; accrual of cause of action*

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

*Overcharges defined*

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

*Commencement of actions arising prior to effective date of act*

Sec. 6. Actions by carriers of property for compensation or hire for the recovery of their charges, or any part thereof, and actions against carriers for the recovery of overcharges, on shipments made and delivered prior to the effective date of this Act shall be commenced within three years from effective date of this Act, and not after. Added Acts 1959, 56th Leg., p. 966, ch. 451, § 1.

Effective 90 days after May 12, 1959,  
date of adjournment.

*Title of Act:*

An Act establishing a three-year statute of limitations on suits involving freight charges on property transported by carriers for compensation or hire within the

State of Texas; providing that all laws in conflict herewith are repealed; providing for severability; and declaring an emergency. Acts 1959, 56th Leg., p. 966, ch. 451.

TITLE 92—MENTAL HEALTH

I. MENTAL HEALTH CODE

CHAPTER IV—GENERAL HOSPITALIZATION PROVISIONS

Art. 5547—83. Legal competency

(a) The judicial determination under this Code that a person is mentally incompetent creates a presumption that the person continues to be mentally incompetent until he is discharged from the the mental hospital or until his mental competency is re-determined by a court.

(b) The judicial determination that a person is mentally ill or the admission or commitment of a person to a mental hospital, without a finding that he is mentally incompetent, does not constitute a determination or adjudication of the mental competency of the person and does not abridge his rights as a citizen or affect his property rights or legal capacity.

(c) When any person under the provisions of this Code shall have been committed as a patient to a mental hospital for any period, regardless of duration, by order of a county court, and shall have been discharged and released by such hospital, such person may file application with such county court for an order adjudicating that he is is not now mentally ill or incompetent, to which application shall be attached a certification attesting to such facts, signed by an attending physician at the hospital to which such patient was committed. The court may enter an order granting such application; but, in connection therewith, he may conduct a hearing and summon such witnesses as in his judgment may be necessary to satisfy him as to the merits of the application. As amended Acts 1959, 56th Leg., p. 887, ch. 409, § 1.

Emergency. Effective May 30, 1959.

Section 2 of the amendatory Act of 1959 contained a severability clause.

II. MISCELLANEOUS PROVISIONS

Arts. 5557—5561. Repealed. Acts 1957, 55th Leg., p. 505, ch. 243, § 103

Art. 5561a. Apprehension, arrest, and trial of persons not charged with criminal offense; information; warrant; notice of hearing

Sections 1 to 5. Repealed. Acts 1957, 55th Leg., p. 505, ch. 243, § 103.

The repealed sections related to the issuance of a warrant for the apprehension of a person of unsound mind, to a hearing and determination of the matter, and to restoration hearings. The sections were derived from Acts 1937, 45th Leg., p. 1049, ch. 446. Prior to the repeal, section 2 was amended by Acts 1941, 47th Leg., p. 635, ch. 383, § 1, and section 4 was amended by Acts 1941, 47th Leg., p. 562, ch. 356, § 1.

Arts. 5561b, 5561b—1. Repealed. Acts 1957, 55th Leg., p. 505, ch. 243, § 103

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

Art. 5561c. Alcoholism

**Financing of operations**

Sec. 18. The cost of financing the operations of the Texas Commission on Alcoholism shall be borne with funds as provided by Section 7 of this Act and such other funds as the Legislature may from time to time appropriate for this purpose. Funds for the operation of local councils on alcoholism shall be expended only if matched locally. As amended Acts 1959, 56th Leg., p. 476, ch. 204, § 1.

Emergency. Effective May 21, 1959.



TITLE 93—MARKETS AND WAREHOUSES

CHAPTER FOUR—UNIFORM WAREHOUSE RECEIPTS ACT

Uniform Trust Receipts Act, see art. 5499a—51.

TITLE 94—MILITIA—SOLDIERS, SAILORS AND MARINES

CHAPTER THREE—NATIONAL GUARD

Art. 5798a—2. Veterans county service office

**Appointment of officers; term; qualifications**

Sec. 2. Such Veterans County Service Officer and/or Assistant Veterans County Service Officer, shall, if so appointed, serve for the remainder of the current county fiscal year during which they are appointed and thereafter shall be appointed for, and serve for, a term of two (2) years, unless sooner removed for cause by the appointing authority. Such Veterans County Service Officer and such Assistant Veterans County Service Officer shall be qualified by education and training for the duties of such office. They shall be experienced in the law, regulations and ruling of the United States Veterans Administration controlling cases before them, and shall themselves have served in the active Military, Naval or other Armed Forces or Nurses Corps of the United States or Canada during the Spanish American War, World War I, World War II, or the Korean War (commonly referred to as the Korean Conflict or the Korean Police Action), for a period of at least four (4) months, and have been honorably discharged from such service, or a widowed Gold Star Mother or unremarried widow of a serviceman or veteran whose death resulted from service, and shall have been given a certificate of approval by the Veterans Affairs Commission, and/or a letter of approval from the State Commander of a veterans organization chartered by Congress; provided, however, that lack of such certificate or letter shall not disqualify a person otherwise qualified. A statement showing that applicant possesses the above necessary qualifications shall be filed with the County Commissioners Court at or before the time said appointments are made, and the filing thereof shall be a condition precedent to such appointment. As amended Acts 1951, 52nd Leg., p. 597, ch. 351, § 1; Acts 1959, 56th Leg., p. 23, ch. 13, § 1.

Emergency. Effective March 6, 1959.

Section 2 of Acts 1959, 56th Leg. p. 23, ch. 13, read as follows: "It is the intention of the Legislature that Veterans of the Korean War (commonly referred to as the Korean Conflict or the Korean Police Action) who possess the other qualifications enumerated in Section 2 of this Act,

may also be appointed and qualify as Veterans County Service Officer or Assistant Veterans County Service Officer."

Section 3 repeals all conflicting laws and parts of laws to the extent of such conflict. Section 4 was a severability provision.

Art. 5890b. National Guard Armory Board

Section 1. There is hereby created the Texas National Guard Armory Board to be composed of the Commanding General of the 36th Infantry Division or its successor, the Commanding General of the 49th Armored Division or its successor, and the Senior Officer of the Texas Air National Guard; provided, however, that when an officer holding one of the three positions named above ceases to hold such position he will cre-

ate a vacancy on the Board; provided, further, that the persons now serving as members of the Texas National Guard Armory Board as specified in Section 1, Chapter 184, Acts of the 44th Legislature, Regular Session, 1935,<sup>1</sup> as amended by House Bill No. 416, Chapter 130, 55th Legislature, Regular Session, 1955,<sup>2</sup> except as specified hereinafter, shall each serve out his term of office, and shall be members of the Board in addition to the members composing the Board as provided in this Act, and shall have the same powers and duties as other members of the Board while so serving, and upon the position of such additional member becoming vacant, the position becoming vacant will not be filled, and the Board shall thereafter be composed of three (3) members; provided, further, that members of the Texas National Guard Armory Board holding office under the provisions of House Bill No. 416, Chapter 130, 55th Legislature, Regular Session, 1955,<sup>2</sup> who are members qualified as Commanding General, XLI Corps Artillery, and as Commanding Officer, 112th Armored Cavalry Regiment, shall be dropped from the membership of the Texas National Guard Armory Board, and the term of office of such members shall terminate on the effective date of the passage of this Act. The term of office for members of the Texas National Guard Armory Board shall be of six (6) years duration except that an appointment to fill a vacancy for an unexpired term shall be for the duration of the unexpired term. Each officer of the Texas National Guard or the Texas Air National Guard who may thereafter fill the position qualifying him for membership on the Texas National Guard Armory Board, as provided in this Act, shall be certified by the Adjutant General of Texas to the Secretary of State and to the officer concerned within five (5) days after the occurrence of a vacancy, and the officer whose name is so certified shall be eligible to fill such vacancy. Each member of the Texas National Guard Armory Board shall, within fifteen (15) days from the date of his receipt of notice of his eligibility to serve to fill a vacancy, qualify by taking and filing with the Secretary of State the Constitutional Oath of Office.

The Senior and Junior, in military rank, of the members of said Board, shall be, respectively, chairman and treasurer thereof, and the persons holding such offices shall change as military rank may determine when changes in membership of said Board occur.

The Board shall act by resolution adopted at a meeting thereof and held in accordance with its bylaws and rules and regulations. A simple majority of the above-named members of the Board shall constitute a quorum for the transaction of business at all meetings, and any action taken by a majority of the members of the Board present at any meeting thereof shall be deemed to be the action of the Board for all purposes.

It shall be the duty of the Board to select a place for the headquarters of said Board and such place of headquarters may be changed, from time to time, as the majority of said Board may determine, provided, however, that such headquarters shall be in Travis County. As amended Acts 1957, 55th Leg., p. 281, ch. 130, § 1; Acts 1959, 56th Leg., p. 488, ch. 218, § 1.

<sup>1</sup> This article.

<sup>2</sup> So in enrolled bill. Probably should be "1957."  
Emergency. Effective May 22, 1959.

Section 2 of the amendatory Act of 1959, contained a severability clause.

## TITLE 98—NEGOTIABLE INSTRUMENTS ACT

Uniform Trust Receipts Act, see art. 5499a—51.

## TITLE 101—OFFICIAL BONDS

Art.  
6003b. State Employee Bonding Act  
[New].

## Art. 6003b. State Employee Bonding Act

## Title

Section 1. This shall be known and cited as the "State Employee Bonding Act."

## Intent of legislature; uniform standards

Sec. 2. It is the intent of the Legislature in enacting the provisions of this Act to prescribe uniform standards for the bonding of State officers and employees in order to provide adequate protection against loss, and to prescribe a uniform bond covering officers and employees of all agencies, departments, boards, commissions, institutions, courts, and institutions of higher education of the State of Texas.

## Definitions

Sec. 3. For the purposes of this Act the term:

(a) "Bond" means any agreement under which an insurance company becomes obligated as surety to pay, within certain limits, loss caused by the dishonest acts of officers and employees, or to pay for loss caused by failure of officers or employees to faithfully perform the duties of the offices or positions held.

(b) "Agency" means any department, commission, board, institution, court, institution of higher education, or soil conservation district of the State of Texas, but shall not include any other political subdivision of the State.

(c) "Position Schedule Honesty Bond" means any bond covering the honesty of any employee who may occupy and perform the duties of the positions listed in the schedule attached to the bond, each position being covered for a specific amount.

(d) "Honesty Blanket Position Bond" means any bond which covers all positions occupied by officers or employees of an agency for a uniform specified amount applicable to each position.

(e) "Faithful Performance Blanket Position Bond" means any bond which covers all positions in an agency, conditioned that the officers and employees of such agency will faithfully perform the duties of such officers and employees.

(f) "Specific Excess Indemnity" means additional bond coverage of specified positions over and above the coverage specified on a "Position Schedule Honesty Bond" an "Honesty Blanket Position Bond" or a "Faithful Performance Blanket Position Bond."

## Bonding agreements; types of bonds

Sec. 4. The head of any agency, except as otherwise provided for in this Act, is hereby authorized to enter into bonding agreements with an insurance company authorized to do business in the State of Texas for any of the following types of bonds, but no agency or head of any agency shall enter into agreements whereby more than one type of bond is applicable to officers or employees of the agency:

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

(a) A Position Schedule Honesty Bond may be used when not more than a combined total of ten (10) officers or employees in any particular agency or board are to be bonded.

(b) Blanket Position Bond may be used when three (3) or more officers or employees in a particular agency are to be bonded. Specific excess indemnity may be carried on certain specified positions, provided the total of the blanket bond coverage and the specific excess indemnity for any particular position does not exceed Ten Thousand Dollars (\$10,000).

#### Maximum coverage; specific excess indemnity bonds

Sec. 5. (a) Unless otherwise provided for in this Act, the maximum coverage on any State official or State employee shall not exceed the sum of Ten Thousand Dollars (\$10,000). The head of each agency, unless otherwise provided for in this Act, shall determine the coverage need of the agency within this limit.

(b) The Comptroller of Public Accounts and the State Treasurer may, in addition to entering into agreements for Position Schedule Honesty Bond or Blanket Position Honesty Bond, are each authorized to enter into agreements for Specific Excess Indemnity Bonds and to enter into agreements for Faithful Performance Blanket Position Bonds.

(c) All bonds for Specific Excess Indemnity in excess of the Ten Thousand Dollars (\$10,000) hereinabove specified, shall be entered in to only upon the recommendation and approval of the State Auditor, when, in his judgment, such excess coverage is necessary to adequately protect the State.

#### Forms; payment of premiums; copies; filing; term

Sec. 6. (a) All bonds provided for in this Act shall be on forms approved by the State Board of Insurance, and shall be written only in companies authorized to act as surety in the State of Texas.

(b) The premiums on all bonds provided for in this Act shall be paid by the State of Texas as obligee out of moneys appropriated for such purpose by the Legislature, or moneys appropriated by the Legislature to any agency for administration or administration expense, or for operation expense, or for general operation expense, or for maintenance, or miscellaneous expense, or for contingencies, or out of moneys in possession of an agency outside the State Treasury and available to such agency for expenditure for operational expense of the agency.

(c) All bonds provided for in this Act shall be written in triplicate originals. One original shall be filed in the office of the Secretary of State; one original shall be filed in the office of the Comptroller of Public Accounts; and one original shall be filed in the office of the agency covered by the bond, and each agency is charged with the responsibility of the custody of such bonds.

(d) Contracts or agreements for bond coverage may be purchased on a three-year basis, and the bond coverage shall cover the particular office or position rather than the person occupying the office or position at the time the agreement is entered into.

#### Actions to recover losses

Sec. 7. The Attorney General of Texas, upon notice by any agency of any loss covered by any bond provided for in this Act, shall have the authority to proceed immediately to institute or cause to be instituted any action to recover such loss, and to take any action necessary for the

recovery of the obligation of the surety. All recoveries of losses and all recoveries under bonds covered by the provisions of this Act shall be deposited to the credit of the fund from which the loss occurred. Acts 1959, 56th Leg., p. 855, ch. 383.

Emergency. Effective May 30, 1959.

Section 8 of the Act of 1959 repealed all conflicting laws and parts of laws to the extent of such conflict.

Approving official bond with nonresident surety, see Vernon's Ann.P.C. art. 389.

Bond and warrant law, cities and counties, see art. 2368a.

Suits on bonds, see Vernon's Texas Rules of Civil Procedure, Rules 34 to 36.

## TITLE 102—OIL AND GAS

## GENERAL PROVISIONS

Art.  
6052a. Repealed.

Art. 6008—1. Interstate Compact to Conserve Oil and Gas; Extension of Compact

Consent of Congress to an extension of the Compact to September 1, 1963 was given by Public Law 86—143, 73 Stat. 290, H.J.Res. 280, August 7, 1959.

Art. 6052a. Repealed. Acts 1959, 56th Leg., p. 844, ch. 382, § 31. Eff. Sept. 1, 1959

Art. 6052a was derived from Acts 1951, 52nd Leg., p. 612, ch. 363, §§ 1 and 7 and provided for the establishment of a liquefied petroleum gas division of the railroad commission. See, now, art. 6066d.

Section 31 of Acts 1959, 56th Leg., p. 844, ch. 382 contained a savings clause, see art. 6066d, § 31.

Art. 6053. Regulation of utilities

Sec. 3—19, Repealed. Acts 1959, 56th Leg., p. 844, ch. 382, § 31. Eff. Sept. 1, 1959.

Prior to repeal, sections 6, 7, 10, 11, 12 and 18 were amended by Acts 1951, 52nd Leg., p. 612, ch. 363, §§ 2 to 6, 8. See, now, art. 6066d.

Section 31 of Acts 1959, 56th Leg., p. 844, ch. 382 contained a savings clause, see art. 6066d, § 31.

Art. 6065. Employees of Commission

“The Commission may employ and appoint, from time to time, such experts, assistants, accountants, engineers, clerks and other persons as it deems necessary to enable it at all times to inspect and audit all records or receipts, disbursements, vouchers, prices, pay rolls, time cards, books and official records, to inspect all property and records of the utilities subject to the provisions hereof, and to perform such other services as may be directed by the Commission or under its authority. Such persons and employees of the Commission shall be paid for the service rendered such sums as the Commission may fix. As amended Acts 1959, 56th Leg., p. 634, ch. 288, § 1.

Effective 90 days after May 12, date of adjournment.

Art. 6066. Expenditures

“The salary and expenses of the expert and his assistant and the salaries, wages, fees, and expenses of every other person employed or appointed by the Commission under the provisions of this subdivision, and all other expenses, costs, and charges, including witness fees and mileage incurred by/or under authority of the Commission or a Commissioner in administering and enforcing the provisions of this subdivision or in exercising any power or authority hereunder, shall be paid out of the Gas Utilities Fund provided for by Article 6060, as amended by House Bill No. 547, Acts of the Regular Session of the 42nd Legislature, by the State Treasurer on warrants of the Comptroller on orders or vouchers approved by the Commission or Chairman thereof. The entire

amount derived from the tax imposed by Article 6060, as amended, shall be used for the purposes of enforcing the provisions of the preceding Article 6050, et seq. Any surplus remaining in this fund after paying all such salaries and expenses as may be contracted to be paid and incurred and such as may be reasonably estimated by the Commission for its use shall be paid over to the General Revenue Fund on September first of each year. As amended Acts 1959, 56th Leg., p. 633, ch. 287, § 1.

Emergency. Effective May 30, 1959.

## Art. 6066d. Liquefied Petroleum Gas Code

### Short Title of Act

Section 1. This Act shall be known and may be cited as "The Liquefied Petroleum Gas Code" or "LPG Code."

### Definitions

Sec. 2. A. General Construction. All words, terms and phrases used or appearing in this Act shall have and be given their usual and ordinary meaning.

B. Construction of Particular Words, Terms and Phrases. Notwithstanding anything to the contrary, however, the following words, terms and phrases shall have and be given the following definitions for the purposes of this Act:

(1) Liquefied Petroleum Gases. The term "liquefied petroleum gases" or "LPG" is used herein and shall be construed to mean and include any material which is composed predominantly of any of the following hydrocarbons, or mixtures thereof: propane, propylene, butane (normal butane or isobutane) and butylenes.

(2) Container. The word "container" is used herein and shall be construed to mean and include any receptacle in which LPG is transported, delivered or stored or in which LPG is injected for utilization or consumption by or through an LPG system.

(3) Appliance. The word "appliance" is used herein and shall be construed to mean any apparatus or fixture which utilizes or consumes LPG furnished or supplied by an LPG system to which it is connected or attached.

(4) LPG System. The word "system" or "LPG system" is used herein and shall be construed to mean and include all piping, fittings and valves, exclusive of containers and appliances, which connect one or more containers to one or more appliances which utilize or consume LPG.

(5) Commission. The word "Commission" is used herein and shall be construed to mean the Railroad Commission of the State of Texas.

(6) Person. The word "person" is used herein and shall be construed to mean and include individuals, partnerships, firms, corporations, unincorporated associations, or any other business entity.

(7) Employees. The word "employee" is used herein and shall be construed to mean any individual who renders or performs any services or labor for another person, as hereinabove defined, for compensation and shall include individuals hired on a part time or temporary basis, as well as individuals hired on a full time or permanent basis.

### Legislative Grant of Authority to the Railroad Commission of Texas

Sec. 3. A. General. The Railroad Commission of Texas is hereby authorized, empowered, and directed, and it shall be its duty to promulgate and adopt, in accordance with this Act, adequate rules, regulations, and/

or standards pertaining to any and all aspects or phases of the LPG industry (except as provided in Subsection D. of this Section) which will protect or tend to protect the health, welfare, and safety of the general public.

B. Containers, Tanks, Appliances, Systems and Equipment. The Railroad Commission of Texas is hereby authorized to adopt by reference the published Codes of the National Board of Fire Underwriters, the National Fire Protection Association, the American Society for Mechanical Engineers, and/or any other nationally recognized society, either in whole or in part, as the standards to be complied with in the design, construction, fabrication, assembly, installation, use and maintenance of containers, tanks, appliances, systems and equipment for the transportation, storage, delivery, utilization and/or consumption of LPG. Containers used in accordance with and subject to the regulations of the Interstate Commerce Commission and containers which are owned or used by the Government of the United States of America are excepted from the provisions of this Section.

C. Trucks, Trailers, or Other Motor Vehicles. The Railroad Commission of Texas shall, pursuant to the aforesaid authority and mandate, prescribe rules, regulations and/or standards with regard to trucks, trailers, or other motor vehicles on which containers, tanks or vessels are mounted or situated with facilities for dispensing LPG requiring all rigid pipes and valves thereon to be recessed or otherwise protected by heavy guard rails to afford maximum protection against damage thereto in the event of an accident, and such other further rules, regulations and/or standards pertaining to trucks, trailers or other motor vehicles used or to be used in the transportation, delivery or distribution of LPG as it might deem proper or advisable.

D. Exception. None of the provisions of this Act, shall be applicable to the production, refining, or manufacturing of LPG or to the storage, sale, or transportation by pipeline or railroad tank car of LPG by any producer, refiner, or manufacturer, or to equipment used by any producer, refiner or manufacturer in any such producing, refining or manufacturing process or in such storage, sale or transportation by pipeline or railroad tank car, or to any deliveries of LPG to another person at the place of production, refining, or manufacturing.

**Creating the Liquefied Petroleum Gas Division of the Railroad Commission  
and Providing for the Appointment of a Director**

Sec. 4. There is hereby created and organized, a separate and distinct Division of the Railroad Commission of Texas to be known as the Liquefied Petroleum Gas Division of the Railroad Commission of Texas, also referred to in this Act as the LPG Division, which shall be charged with the duty and responsibility of administering and enforcing the Laws of the State of Texas and the rules, regulations and/or standards promulgated and adopted by the Railroad Commission of Texas which pertain to liquefied petroleum gas. The Railroad Commission of Texas shall appoint and employ a Director of such Division who serves at the pleasure of said Commission and who shall devote his full time and attention in administering the provisions of this Act. Sufficient employees shall be provided for the enforcement of this Act.

**License**

Sec. 5. No person shall hereafter engage in this State in the manufacture, fabrication, assembly and/or sale of containers, tanks, appliances, apparatus, systems, or other equipment for use in this State which utilize



or consume LPG, nor shall any person hereafter install, connect, service or repair any of the foregoing, nor shall any person hereafter transport, store, sell, deliver or dispense LPG in this State, without first having applied for and received from the LPG Division a license to do so, except where the LPG so handled is in quantities of less than one (1) gallon United States water capacity and is an integral part of a device for its utilization or where such person is not engaged in business as a dealer in LPG as more specifically set out in Section 6 hereof.

#### Categories and Fees of Dealers

Sec. 6. A. A prospective dealer in LPG may make application to the LPG Division as provided in Section 9 of this Act, for a license to engage in any or all of the following categories of dealers; and the following license fees are hereby fixed and assessed for each such category:

(1) Manufacturers or Fabricators. The manufacture, fabrication, assembly and/or sale of containers, tanks, equipment and/or appliances which utilize or consume LPG. The license fee for this category shall be One Hundred Dollars (\$100) per annum.

(2) Limited Installers or Repairmen. The installation, service and/or repair of cooking and space heating appliances, excluding water heaters, floor furnaces and central heating and/or cooking units, and excluding the installation of LPG systems of equipment other than an appliance connector approved by the LPG Division. The license fee for this category shall be Five Dollars (\$5) per annum.

(3) Wholesalers or Jobbers. Any person who is not a producer or refiner who sells LPG to transporters, industrial consumers, processors, distributors and/or retail dealers. The license fee for this category shall be One Hundred Dollars (\$100) per annum.

(4) Carriers. The transportation only of LPG by carriers for hire or contract. The license fee for this category shall be One Hundred Dollars (\$100) per annum.

(5) General Installers and Repairmen. The sale, installation and/or repair of containers, tanks, appliances, systems and equipment which utilize LPG. The license fee for this category shall be Twenty-five Dollars (\$25) per annum.

(6) Retail Dealers. The transportation, storage, sale, distribution and/or delivery of LPG at retail including the sale, installation and/or repair of LPG containers, tanks, piping, appliances, and/or equipment. The license fee for this category shall be One Hundred Dollars (\$100) per annum.

(7) Carburetors. The sale, installation, service and/or repair of LPG motor fuel carburetion systems and equipment. The license fee for this category shall be Twenty-five Dollars (\$25) per annum.

(8) Bottle Exchanges. The operation of an ICC bottle, filling and/or container exchange including the buying and selling, but not the delivery, pickup or other transportation, of ICC bottles or containers. The license fee for this category shall be Twenty-five Dollars (\$25) per annum.

(9) Service Station. The operation of a LPG motor fuel service station only. The license fee for this category shall be Twenty-five Dollars (\$25) per annum.

(10) Municipal Corporations. The operation of a LPG system through mains, meters or pipes by any incorporated city, village or town. The license fee for this category shall be Twenty-five Dollars (\$25) per annum.

(11) Bottle Dealers. The transportation, delivery, and pickup of ICC bottles and/or containers. The license fee for this category shall be One Hundred Dollars (\$100) per annum.

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

(12) **Bottle Installers.** The installation and/or connection of ICC bottles and/or containers. The license fee for this category shall be Twenty-five Dollars (\$25) per annum.

(13) **Drilling Rig Dealers.** The transportation and/or sale of LPG to be used only in the operation of a drilling rig. The license fee for this category shall be One Hundred Dollars (\$100) per annum.

#### **Limitation of Authority of Dealers**

Sec. 7. No dealer in LPG authorized under any one or more of the categories thereof set forth in Section 6 of this Act shall do or perform any of the activities set forth in another category thereof for which he is not authorized without qualifying therefor, provided, however, that in no event shall any person be required to pay a fee in excess of One Hundred Dollars (\$100) per annum for a license as a dealer in LPG under said Section 6 regardless of the number of categories for which he is licensed.

#### **Requirement of Qualified Employees and Bulk Storage**

Sec. 8. A. No person shall hereafter be granted or issued a license under any of the categories of Section 6 of this Act, as an authorized dealer in LPG, nor shall any existing or present license as an authorized dealer in LPG be renewed hereafter, unless such person employs only qualified employees in accordance with the provisions of Section 10 of this Act.

#### **Applications and Hearings for License as Dealer in LPG**

Sec. 9. A. **Applications.** All applications for a license as a dealer in LPG shall be submitted to the LPG Division on printed forms furnished by the LPG Division and shall contain such pertinent information as the LPG Division shall require.

B. **Hearings.** The Commission shall cause to be held quarterly public hearings on the second Monday in the months of January, April, July and October of each and every year hereafter on all such applications; or upon such other occasions as the Commission may, in compliance herewith, deem necessary. Provided further that in the event that the second Monday should fall on a holiday, such hearings shall be held on the first weekday immediately next following such holiday.

(1) **Notice.** Notice of each such hearing setting forth the name, address, business location and the name or style of each such applicant and the category or categories applied for under Section 6 of this Act shall be posted in a conspicuous place in the Office of Director of the LPG Division in Travis County, Texas, at least thirty (30) days prior to the date of such hearing.

(2) **Nature of the Hearing.** For each category under Section 6 of this Act, the Commission shall cause to be prepared an examination, to be based upon the recognized standard codes and practices promulgated by the Railroad Commission of the State of Texas, affecting such category, such as will require an applicant or in case the applicant is a partnership, firm, corporation, unincorporated association, or any other business entity, the individual who is or shall be directly responsible for and actively supervising the operations of the dealership, in order to become a dealer in such category to make good and sufficient proof that he can and will meet the safety requirements provided in this Act, and by the rules and regulations of the Railroad Commission in so far as the same apply to such category.

(3) **Order.** If upon a public hearing so held, such an applicant should be found to be qualified to receive a license as a dealer in LPG for one or

more of the categories applied for, the Commission shall then cause to be entered an order to that effect upon its records noting the category or categories for which applicant has been found to be qualified or in the event applicant failed to qualify said fact shall be entered in a like manner.

(4) Temporary License. After the entry of such an order, the Commission shall forthwith cause to be issued a temporary license as a dealer in LPG under such category or categories to said applicant which shall be expressly conditioned upon an actual inspection and approval by the LPG Division of the storage facilities of said applicant, if a license as a retail dealer in LPG under Subsection (6) of Section 6 of this Act is involved, and an examination of the qualified employees of said applicant; no business shall be conducted or transacted by such applicant until a final license has been issued by the Commission after said inspection and examination have been approved; provided, however, should the LPG Division fail or refuse to conduct the inspection herein provided within ten (10) days from the date applicant posts a written request for inspection to the Commission by certified mail, applicant shall then have the right to commence transaction of business.

(5) Final License. A final license shall be issued by the Commission to said applicant in the name under or by which he conducts or proposed<sup>1</sup> to conduct his business as such a dealer. Said license shall run to the dealership to or in connection with which it was issued and it shall confer no rights or privileges separate and apart from such dealership.

1. So in enrolled bill.

(6) Automatic Renewal. Each license as an authorized dealer in LPG shall be renewable upon the timely payment or tender of the license fee established and assessed therefor, and by furnishing the Commission with a bond as required in Section 23 of this Act, together with a certificate of insurance evidencing that the insurance required in Section 24 of this Act is in full force and effect and, if he should be a retail dealer under Section 6 (6) of this Act, an affidavit duly sworn to, stating that such dealer's storage facilities as required in Section 8 are in conformity with said statutory requirements with a brief description of the location, capacity and general condition of said facilities, together with a copy of the lease or other written agreement under which said dealer has the right to exclusive use and possession thereof if he does not own said facilities, without any other information or forms being necessary or required for the renewal of any such license.

#### Qualified Employees

Sec. 10. A. Examination. After the effective date of this Act, no dealer in LPG shall employ any person as a service, and/or installation man or any person as a delivery or transport truck driver unless such person shall have submitted to and passed an examination as prescribed by the Commission to determine his competency to safely perform the duties required of him in handling or dealing with LPG in the capacity in which he is to be employed; provided, however, a trainee employee shall be exempt from such examination for a period of forty-five (45) days, and until examined by a representative of the Commission. Any LPG dealer employing any such trainee employee shall, within forty-five (45) days of the commencement of such employment, notify the Commission of such employment so that an examination may be scheduled. Such examination shall be made in the field, and if the employee passes the examination such fact shall be reported to the LPG Division and noted in its records.

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B. Present Employees. Notwithstanding anything herein to the contrary, however, any person who is employed by a LPG dealer on the effective date of this Act shall be presumed to be a qualified employee until examined by a representative of the Railroad Commission in the same manner as prescribed in Section 10A hereof. If such employee shall fail to pass said examination, such employee shall nevertheless continue as a qualified employee for an additional period of thirty (30) days and shall be entitled to one reexamination during said period. If such employee fails to pass this second examination, such employee shall no longer be a qualified employee and such employee may not be employed by any LPG dealer in such work unless and until such employee shall pass a subsequent examination.

#### Registration of Trucks

Sec. 11. A. Transport and Delivery Trucks. Each truck or other motor vehicle equipped with a LPG cargo tank and each truck used principally for transporting or delivering LPG in portable containers shall be required to be registered hereunder.

B. Registration Forms and Annual Fees. Forms for the registration of such trucks or motor vehicles shall be furnished by the Commission and shall contain such information as the Commission shall require. The registration fee for such trucks or motor vehicles shall be Ten Dollars (\$10) per truck or motor vehicle per annum.

C. Motor Carrier Laws and Department of Public Safety. Nothing contained in this Act shall be construed to alter, modify, amend or revoke all or part of the Motor Carrier Laws of this State, and the Department of Public Safety of the State of Texas shall cooperate with the Commission in the administration and enforcement of this Act and the rules, regulations and/or standards promulgated thereunder in so far as same apply to motor vehicles.

#### Fees

Sec. 12. All fees established and assessed under this Act shall be payable between the first and fifteenth day of each September of each and every year hereafter.

#### Proration

Sec. 13. If any license or registration which is required under this Act and for which the fee established and assessed thereunder is in excess of Ten Dollars (\$10) is issued after the fifteenth day of September of any year hereafter, the fee therefor shall be prorated for the balance of the year remaining after such issuance to August 31, thereafter, but in no event shall the prorated fee be less than one-fourth ( $\frac{1}{4}$ ) of the total fee and no fee for Ten Dollars (\$10), or less, shall be subject to proration.

#### Disposition of funds and fees; funds available for expenses

Sec. 14. All funds held or controlled and all fees received from licenses issued under this Act by the Railroad Commission of Texas for the Liquefied Petroleum Gas Division and all funds thereafter received by the Railroad Commission under the provisions hereof, shall be deposited in the State Treasury, as received, to the credit of the Liquefied Petroleum Gas Division and expended in accordance with appropriations made by Law. The funds realized from fees shall be applied first to the payment of the necessary expenses of the Liquefied Petroleum Gas Division in enforcing and administering the provisions of this Act. The members of said Railroad Commission shall look alone to the revenue derived from

the operation of this Law, appropriated by the Legislature, for expenses of conducting the Liquefied Petroleum Gas Division and administering this Act.

#### **Suspension or Revocation**

Sec. 15. The Commission is hereby authorized and empowered to suspend, or revoke any license, registration or permit granted pursuant to this Act, if it should appear upon a public hearing that the holder of said license, registration or permit has violated or failed to comply with, or is violating or failing to comply with any of the provisions of this Act, or any of the rules, regulations, standards and specifications prescribed, promulgated or adopted by the Railroad Commission pursuant to this Act.

#### **Public Hearings**

Sec. 16. The Commission is hereby authorized and empowered, and it shall be its duty to cause to be notified any person in writing of any acts, omissions or conduct on his part which the Commission considers to be in violation of or not in compliance with any provision or provisions of this Act, or any rules, regulations and/or standards promulgated and adopted pursuant thereto. Said complaint shall specify the particular acts, omissions or conduct complained of and shall designate a date by which time same must be corrected or discontinued. If said person has not corrected or discontinued the acts, omissions or conduct complained of on or before the designated date, the Commission shall cause to be held a public hearing not less than ten (10) days (exclusive of the day of mailing), after notice of such hearing has been forwarded by registered or certified mail to such person. Said notice shall designate the date, time and place for such hearing.

#### **Investigation, Witnesses, Books, Records and Documents**

Sec. 17. The Commission shall have the power to conduct any investigations related to the subject matter of the hearing, to summon and compel the attendance at such hearing of any witnesses, to require the production of books, records and documents related to the subject matter of any investigation or hearing and to provide for the taking of depositions of witnesses and the use of interrogatories and admissions as set forth in the Texas Rules of Civil Procedure.

#### **Right to be Heard**

Sec. 18. Any person against whom a complaint has been filed shall be notified of the filing of such complaint as above set forth, and any such person shall have the right to appear at such hearing, file an answer to such complaint, introduce evidence, and be heard either in person or by counsel, or both.

#### **Findings and Judgment**

Sec. 19. At the conclusion of any such public hearing, the Commission shall cause to be entered its findings and judgment in writing which shall be filed in a permanent public record book maintained by the LPG Division. A copy thereof shall be furnished to the person charged in such complaint. If the Commission shall find that the party charged in such complaint has violated or failed to comply with, or is violating or failing to comply with any of the provisions of this Act, and/or any of the rules, regulations and/or standards promulgated and adopted pursuant to this Act, the Commission may suspend the license or registration involved for a definite period, not in excess of ninety (90) days, or may revoke same.

#### Action for Reinstatement

Sec. 20. Any person who has had a license or registration suspended or revoked, may file an action in the district court of the county or district wherein he resides or maintains his principal place of business for the reinstatement of such license or registration within thirty (30) days from the date the Commission rendered its order suspending or revoking same, and not thereafter. Such appeal to the district court shall be by way of a trial de novo, and such trial on appeal shall be the same as if such action had been originally filed in said court. If any person who has had a license or registration suspended or revoked should within ten (10) days after receipt of notice of such suspension or revocation, give written notice to the Commission of his intention to appeal from the order of the Commission, the action of the Commission suspending or revoking said license or registration shall be stayed for a period of thirty (30) days from and after the expiration of said ten (10) day period; provided, however, that if no action for reinstatement of the license or registration suspended or revoked is filed by such person within this period, the order of the Commission suspending or revoking same shall become final. If such an action for reinstatement is timely filed, the order of the Commission suspending or revoking such license or registration shall continue to be stayed until said action shall have been heard and disposed of by the district court.

#### Procedure upon Refusal or Denial of License

Sec. 21. The same procedure as set forth above for suspension or revocation of a license or registration shall be applicable to the refusal or denial of the Commission to grant a person a license as a dealer in LPG after proper application therefor.

#### Injunctions

Sec. 22. Whenever it shall appear to the Commission, either upon complaint or otherwise, that any person holding a license or registration hereunder is engaged in or is about to engage in any acts which are in violation of or not in compliance with the provisions of this Act, the Attorney General, on request by the Commission, and in addition to any other remedies provided herein, may bring action in the name and in behalf of the State of Texas against such person to enjoin him from commencing or continuing to engage in any such acts. The district court of any county, wherein it is shown that all or any part of said acts have been or are about to be committed, shall have jurisdiction of any action brought under this Section, and this provision shall be superior to any other statutory provision fixing the jurisdiction or venue of suits for injunction. No bond for injunction shall be required of the Commission or Attorney General in any such proceeding.

#### Surety Bond

Sec. 23. No person shall be issued a license as an authorized dealer in LPG under any of the categories of Section 6 of this Act nor shall any such existing license be continued or renewed hereafter unless such person shall furnish the Commission with a surety bond in the face amount of Two Thousand Dollars (\$2,000) with a bonding company authorized to do business in this State. All such bonds shall contain a provision that the obligor thereon will indemnify and pay to the State of Texas, to the extent of the face amount thereof, all judgments which may be recovered in the name of the State of Texas against such person during the term of such bond and proximately caused by such person's

violation of or failure to comply with this Act and the rules, regulations, and/or standards promulgated and adopted thereunder.

#### **Insurance**

Sec. 24. No person shall be issued a license as an authorized dealer in LPG under any of the categories of Section 6 of this Act nor shall any such existing license be continued or renewed hereafter unless such person shall take out and maintain, as long as he continues in business as such a dealer, with a reliable insurance carrier qualified to do business in this State the following kinds and amounts of insurance policies to guarantee payment of damages proximately resulting from the negligent acts of such person while engaged in any of the activities hereinafter set forth:

A. Automobile bodily injury and property damage insurance coverages on each and every motor vehicle, including trailers and semitrailers, used in the transportation of LPG, in an amount of not less than Five Thousand Dollars (\$5,000) for bodily injuries sustained by any one (1) person in any one (1) accident and not less than Ten Thousand Dollars (\$10,000) for bodily injuries sustained by two (2) or more persons in any one (1) accident, and not less than Five Thousand Dollars (\$5,000) total property damage for any one (1) accident.

B. Manufacturers and Contractors liability policy in an amount of not less than Five Thousand Dollars (\$5,000) for bodily injuries sustained by any one (1) person in any one (1) accident and not less than Ten Thousand Dollars (\$10,000) for bodily injuries sustained by two (2) or more persons in any one (1) accident, and not less than Five Thousand Dollars (\$5,000) total property damage for any one (1) accident.

C. Workmen's compensation or employer's liability coverage.

#### **Penalties**

Sec. 25. In addition to and supplemental of injunctive relief and other penalties herein provided, any violation or failure to comply with this Act, and the rules, regulations and/or standards promulgated and adopted pursuant thereto shall constitute a misdemeanor and shall be punishable in any court of competent jurisdiction by a fine of not less than Five Dollars (\$5) and not more than Two Hundred Dollars (\$200) and provided further, that each day such violation or failure to comply continues shall constitute and be punishable as a separate offense.

#### **Entry for Inspection**

Sec. 26. Any inspector, employee or agent of the Commission is hereby authorized to enter at any reasonable time onto premises of a licensee hereunder for the purpose of inspection of any container, tank, apparatus, system or equipment in which LPG is stored or by or through which LPG is utilized or consumed.

#### **Warning Tag**

Sec. 27. Any such inspector, employee or agent is hereby authorized to declare as unsafe or dangerous any such container, tank, apparatus, system or equipment which does not conform to the safety requirements of this Act, or any rules, regulations and/or specifications adopted or promulgated hereinunder, or is otherwise defective, and to cause a warning tag to be conspicuously attached thereto.

**Supplying LPG to Such Containers, Tanks, Apparatus, Systems  
or other Equipment**

Sec. 28. It shall constitute a misdemeanor for any person to hereafter knowingly sell, furnish, deliver or supply LPG for storage in or utilization or consumption by or through any such container, tank, apparatus, system or equipment to which such a warning tag has been attached. Said misdemeanor shall be punishable in any court of competent jurisdiction by a fine of not less than Fifty Dollars (\$50) and not more than Five Hundred Dollars (\$500).

**Penalty for Unauthorized Removal of Tag**

Sec. 29. It shall constitute a misdemeanor for any unauthorized person to remove, destroy or in any way obliterate any such warning tag attached to any such tank, apparatus, system or equipment. Said misdemeanor shall be punishable in any court of competent jurisdiction by a fine of not less than Fifty Dollars (\$50) and not more than Five Hundred Dollars (\$500).

**Repeal of Conflicting Laws; Saving Clause as to Pending Proceedings**

Sec. 31. That Subsections 3 through 19 of Section 1 of Senate Bill No. 269, Acts, 1945, Forty-ninth Legislature, page 629, Chapter 358, as amended by Senate Bill No. 256, Acts, 1949, Fifty-first Legislature, page 411, Chapter 220, as further amended by Senate Bill No. 143, Acts, 1951, Fifty-second Legislature, page 612, Chapter 363, also known as Articles 6053 and 6052a of the Revised Civil Statutes of Texas, as well as all laws or parts of laws in conflict with this Act in so far as the same are in conflict, be and the same are hereby repealed; provided, however, that all permits, licenses, orders, rules, regulations and specifications issued pursuant to said laws prior to the effective date of this Act shall be valid for the period for which they were issued unless sooner revoked by the Commission for any cause for which the Commission is authorized by this Act to revoke hereunder; provided further, that all prosecutions and legal or other proceedings begun, and any violation of the law whether prosecution or administrative action is commenced or not, and any cause of action of civil or criminal nature existing under the provisions of that law now in effect, shall continue in effect and remain in full force and effect until terminated as under the terms of the law now in force, notwithstanding the passage of this Act. Acts 1959, 56th Leg., p. 844, ch. 382.

Effective Sept. 1, 1959.

Section 30 of the Act of 1959 contained a severability clause.



**TITLE 103—PARKS**

**1. STATE PARKS BOARD**

Art.  
6069b. Contracts with State Highway Commission for construction of roads in state parks [New].

**4F. JIM HOGG MEMORIAL PARK**

6077h—3. Construction and maintenance work within park; force labor [New].

**5. COUNTY PARKS**

Art.  
6079e. Counties of 350,000 or more [New].  
6079f. Adjacent counties having population of 350,000 or more [New].

**1. STATE PARKS BOARD**

**Art. 6067. Creating Board**

Travel Regulations Act of 1959, see art. 6823a.

**Art. 6069b. Contracts with State Highway Commission for construction of roads in state parks**

Section 1. The State Highway Commission and the State Parks Board are hereby authorized to enter into and perform agreements or contracts together for the construction and paving of roads by the State Highway Department in and adjacent to the various State Parks.

Sec. 2. All methods, requirements, and procedures necessary to enter into and perform such agreements or contracts, and the payments therefor, shall be in conformity with Chapter 340, Acts of the Fifty-third Legislature, Regular Session, 1953, known as the Interagency Cooperation Act.<sup>1</sup> Acts 1959, 56th Leg., p. 435, ch. 195.

<sup>1</sup> Article 4413(32).

Effective 90 days after May 12, 1959, date of adjournment.

**Title of Act:**

An Act authorizing the State Highway Commission and the State Parks Board to enter into and perform contracts for the

construction of roads in and adjacent to State Parks, in conformity with Chapter 340, Acts of the Fifty-third Legislature, Regular Session; providing a severance clause; and declaring an emergency. Acts 1959, 56th Leg., p. 435, ch. 195.

**Art. 6070. Traveling expenses**

Travel Regulations Act of 1959, see art. 6823a.

**4F. JIM HOGG MEMORIAL PARK**

**Art. 6077h—3. Construction and maintenance work within park; force labor**

After the effective date of this Act, the Wood County Commissioners Court, including the County Judge and each of the four (4) Commissioners representing the four (4) Commissioners Precincts of said County, are hereinafter granted the power and authority to employ the use of force labor, county owned equipment and technical help in any and all construction work after agreement with the State Parks Board, within the bounds of the Governor James Stephen Hogg Memorial Shrine Park, located in the City of Quitman, Wood County, Texas. For the purpose of fulfilling the provisions of this Act, the Commissioners Court of Wood

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County will be authorized to remove underbrush, provide adequate drainage, construct driveways and to maintain sections of said Park all in accordance to the plans and specifications now in existence and to be outlined by the State Parks Board. Nothing in this Act shall be construed to mean that the Commissioners Court of Wood County shall be required to perform work within the scope of this Act by the State Parks Board, but rather on a permissive and voluntary basis. Acts 1959, 56th Leg., p. 985, ch. 460, § 1.

Emergency. Effective May 30, 1959.

Section 2 of the Act of 1959 repealed all conflicting laws and parts of laws to the extent of such conflict. Section 3 contained a severability clause.

## 5. COUNTY PARKS

### Art. 6079e. Counties of 350,000 or more

#### Applicability of law

Section 1. The provisions of this Act shall apply to any county in this State having a population of three hundred fifty thousand (350,000) or more according to the last preceding Federal Census.

#### Creation of board; powers

Sec. 2. Any such county, for the purpose of acquiring, improving, equipping, maintaining, financing, and operating any one or more public parks owned or to be acquired by such county, may by order passed by the Commissioners Court adopt the provisions of this Act, and thereby obtain the benefits hereof for said purpose. In such order it shall be provided, with respect to such park or parks, whether the Commissioners Court shall exercise all the powers granted by and perform all the duties specified in this Act, or whether a 'Board of Park Commissioners' (hereinafter sometimes referred to as the 'Board') shall be created and exercise the powers and perform the duties hereinafter provided with respect to such Board. In the event that it is provided that the Commissioners Court shall exercise all the powers and perform all the duties, then the provisions of this Act with reference to the powers and duties of such Board shall apply to said Commissioners Court, and all the powers granted by and duties specified in this Act relating to said Board and to the Commissioners Court shall be exercised and performed by said Court. In the event that it is provided that such Board shall be created, then the powers granted by and duties specified in this Act shall be exercised and performed by said Commissioners Court and Board in the manner hereinafter set forth. Further, in the event that it is provided that such Board shall be created, the Commissioners Court shall transfer to said Board jurisdiction and control of such park or parks, subject, however, to the provisions of this Act.

#### Personnel of board; compensation; expenses; oath and bond

"Sec. 3. The Board of Park Commissioners shall be composed of seven (7) members. After the Commissioners Court has adopted an order creating such Board, as provided in Section 2 hereof, the Commissioners Court shall appoint seven (7) persons as members of such Board. Three (3) members of the first Board so appointed shall serve for a term expiring on February 1st following their appointment and until their successors have been appointed and qualified, and the remaining four (4) members shall serve for a term expiring on the second February 1st which

follows their appointment (being one year from the date of the expiration of the term of the three (3) members, as provided above) and until their successors have been appointed and qualified. In the appointment of the members of said first Board, the Commissioners Court shall designate the respective terms of office of such members. Except for the first Board, the term of office of members of the Board shall be for two (2) years ending on February 1st and until their successors are appointed and qualified, and in the month of January of each year the Commissioners Court shall appoint three (3) or four (4) Park Commissioners, as the case may be, to succeed the members whose term shall expire on the following February 1st. If a vacancy on the Board occurs because of the resignation or death of a member, or otherwise, the Commissioners Court shall fill the same for the unexpired term by the appointment of a successor member. Each Park Commissioner shall be a duly qualified resident voter of the county but shall not be an officer or employee of the county or of any incorporated city therein. Each Park Commissioner shall within fifteen (15) days after his appointment qualify by taking the official oath and by filing a good and sufficient bond with the County Clerk, payable to the County Judge of such county. Such bond shall be in the sum prescribed theretofore by the Commissioners Court, but not less than Five Thousand Dollars (\$5,000). Said bond shall be conditioned upon the faithful performance of the duties of such Park Commissioner, including the proper handling of all moneys that may come into his hands in his capacity as a Park Commissioner, and the cost of said bonds shall be paid by the Board. A certificate of the appointment or re-appointment of any such Park Commissioner executed by the County Judge and attested by the County Clerk shall be filed in the office of such County Clerk, and shall be conclusive evidence of the due and proper appointment of such Commissioner. Each Park Commissioner shall annually receive as compensation a sum to be fixed by the Commissioners Court not to exceed Fifteen Dollars (\$15) for each meeting attended for the first fifty-two (52) meetings held during a calendar year, but shall receive no compensation for any additional meetings held during such calendar year. Each Park Commissioner shall be compensated for all necessary expenses, including traveling expenses, incurred in performing his (or her) duties as Commissioner.

#### Supervision of commissioners court

Sec. 4. Notwithstanding anything in this Act to the contrary, the Board shall be subject to the supervision of the Commissioners Court in exercise of all its rights, powers, and privileges granted hereunder and in performance of all its duties required hereunder; and the Commissioners Court shall approve all contracts, leases, deeds, and other agreements made or granted by the Board, and appropriate minute entry in the official minutes of said Court shall constitute sufficient evidence of such approval.

#### Chairman of board; officers; quorum; meetings; records; seal

Sec. 5. At the time of appointment of the Park Commissioners of the first Board, the Commissioners Court shall designate one of the Commissioners as Chairman of such Board, who shall serve in that capacity until the expiration of the term for which he was appointed (or within such period until he may have vacated his office as a Park Commissioner), and thereafter the Board shall elect a Chairman from among its Park Commissioners. The Board shall elect from among its own members a Vice-chairman, a Secretary and a Treasurer. The offices of Secretary and Treasurer may be held by the same person, and in the absence or un-

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availability of the Secretary or the Treasurer, in the event two (2) persons are holding said positions, the other such officer may act for and perform all of the duties of such absent or unavailable officer during the period of absence or unavailability. The Board shall hold regular meetings at such times to be fixed by the Board, and may hold special meetings at such other times as the business or necessity may require. Four (4) Park Commissioners shall constitute a quorum of the Board for the purpose of conducting or transacting any of its business and exercising any of its powers, and for all other purposes, and any and all action of the Board may be taken by a majority vote of the Park Commissioners present. The Board shall keep a true and full account of all its meetings and proceedings, and shall preserve its minutes, accounts, contracts, and all other records in a fireproof vault or safe. All such records shall be the property of the Board and shall be subject to inspection by the Commissioners Court and other officers of the county at all reasonable times during office hours on business days. The Board shall adopt a seal which shall be placed on all leases, deeds, and other instruments which are usually executed under seal, and on such other instruments as may be required by the Board.

#### Secretaries and stenographers; employment of park managers

Sec. 6. The Board may employ secretaries, stenographers, bookkeepers, accountants, technical experts, and such other agents and employees, permanent or temporary, as it may require and shall determine their qualifications, duties, and compensation. In addition, the Board may also employ and compensate a manager for any park or parks, and may give him full authority in the management and operation of the park or parks, subject to direction and orders of the Board and the Commissioners Court.

#### Depositories; audit of moneys; warrants or checks

Sec. 7. (a) The depository or depositories of all moneys or funds belonging to or under the control of the Board (other than bond proceeds or revenues and funds pledged to the payment of revenue bonds, which are hereinafter provided for) shall be selected by the Commissioners Court on the basis of competitive bids substantially in the manner prescribed by law for county funds, and the moneys and funds so deposited shall be secured substantially in the manner and amount prescribed by law for county funds.

(b) The County Auditor shall maintain a current audit of all such moneys and funds, and shall prepare monthly and annual audit reports, which reports shall be filed with the Commissioners Court and with the Board, and shall be available for public inspection at all reasonable times during office hours on business days.

(c) Warrants or checks for the withdrawal of such moneys or funds shall be signed by any officer of the Board (or, when duly designated by order or resolution of the Board, by one bonded employee of the Board) and countersigned by the County Auditor.

(d) The County Attorney shall perform all the necessary legal services for the Board.

#### Personal interest

Sec. 8. No Park Commissioner or employee of the Board shall acquire any pecuniary interest, direct or indirect, in any improvements, concessions, equipment, or any business located within the confines of any public park administered by the Board or in any way related there-

to, nor shall any Park Commissioner have any interest, direct or indirect, in any contract or proposed contract for construction, materials, or services in connection with or related to any park under administration by the Board.

**Maintenance and operation of parks; contracts, leases and agreements;  
disbursement of funds**

Sec. 9. Subject to the supervision of the Commissioners Court, the Board shall maintain and operate any park or parks administered by said Board, and subject to the approval of said Court, the Board shall have full and complete authority to enter into any contract, lease, or other agreement connected with or incident to or in any manner affecting the acquisition, financing, construction, equipment, maintenance, or operation of any facility or facilities located or to be located on or pertaining to any park or parks administered by the Board; and any such contract, lease, or other agreement may be for such length or period of time and upon such terms and conditions as may be prescribed therein. The Board shall also have authority to disburse and pay out moneys and funds under its control for any lawful purpose for the benefit of such park or parks.

**Contracts, leases and agreements necessary and convenient**

Sec. 10. Such Board shall have general power and authority to make and enter all contracts, leases, and agreements which the Board shall deem necessary or convenient to carry out any of the purposes and powers granted in this Act, upon such terms and conditions and for such length or period of time as may be prescribed therein. Any such contract, lease, or agreement may be entered into with any person, real or artificial, any corporation, municipal or private, any governmental agency or bureau, including the United States Government and the State of Texas and political subdivisions of said State, and the Board may make contracts, leases, and agreements with any such persons, corporations, or entities for the acquisition, financing, construction, or operation of any facilities in or connected with or incident to any such park. Any and all contracts, leases, and agreements herein authorized, to be effective, shall be authorized by order or resolution of the Board, shall be executed by its Chairman or Vice-chairman and attested by its Secretary or Treasurer, and shall be approved by the Commissioners Court. Any such contract, lease, or agreement shall be binding upon the Board and the County, the powers and provisions set forth in this Act being complete within themselves, without reference to any other statute or statutes.

**Rules and regulations; grants and gratuities; suits**

Sec. 11. (a) The Board shall have the power and authority, subject to the approval of the Commissioners Court, to adopt and promulgate all reasonable regulations and rules concerning the use of any park or parks administered by said Board.

(b) The Board is hereby authorized to accept grants and gratuities (for the benefit of any park or parks administered by the Board or for the use of the Board in carrying out its powers and duties with respect to any such park or parks) in any form and from any source approved by the Board and the Commissioners Court, including the United States Government or any part thereof, the State of Texas or any agency thereof, any private or public corporation, or any other person or persons.

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(c) Such Board shall have the right to sue and be sued in its own name.

#### Revenue bonds

Sec. 12. (a) For the purpose of providing funds to acquire, improve, equip, and repair any such park or parks, or for the acquisition by construction or otherwise of any facilities to be used in or connected with or incident to such park or parks, or for any one or more of such purposes, a county within the purview of this Act shall have the power and is hereby authorized, from time to time, to issue revenue bonds (hereinafter sometimes called the "Revenue Bonds" or "Bonds"), which shall be fully negotiable instruments under the Uniform Negotiable Instruments Law and other laws of the State of Texas. Included, but without limiting, among the properties, improvements, and facilities that may be acquired through the issuance of Revenue Bonds are the following; stadia, coliseums, auditoriums, athletic fields, pavilions, and buildings and grounds for assembly, together with parking facilities or other improvements incident thereto. Any such Revenue Bonds shall be authorized by order (hereinafter sometimes called the "Bond Order") adopted by the Commissioners Court. Such Revenue Bonds shall be issued in the name of the county, shall be signed by the County Judge and attested by the County Clerk, and shall have impressed thereon the seal of the Commissioners Court; provided, that the signature of the County Judge and the signature of the County Clerk on the Revenue Bonds may be the facsimile signatures of such officers, either or both, and the seal of the Commissioners Court may be a facsimile seal, all as may be provided in the Bond Order, and the interest coupons attached to such Revenue Bonds may also be executed by the facsimile signatures of said officers; provided, further, that said facsimile signatures and facsimile seal may be lithographed, engraved, or printed. Such Revenue Bonds shall mature serially or otherwise in not to exceed forty (40) years from their date or dates. Such Bonds may be sold by the Commissioners Court at a price and under terms determined by said Court to be the most advantageous reasonably obtainable, provided that the average interest cost, taking into consideration the maturity date or dates of such Bonds calculated by the use of standard bond yield tables currently in use by insurance companies and investment houses, shall not exceed six per cent (6%) per annum. The Bond Order shall prescribe the details as to the Revenue Bonds. It may contain provisions for the calling of the Bonds for redemption prior to the respective maturity dates at such prices and at such time or times as may be prescribed in such Bond Order, but except for such rights of redemption expressly reserved in the Bond Order and in the Bonds, they shall not be subject to redemption prior to their scheduled maturity date or dates except with the consent of the holder or holders. The Bonds may be made payable at such time or times and at such place or places, within or without the State, as may be prescribed in the Bond Order, and such Bonds may be non-registerable or may be made registerable as to principal alone, or as to both principal and interest, all as may be provided in said Bond Order.

(b) Revenue Bonds may be issued from time to time in one or more installments and in one or more series.

(c) Such bonds may be secured by a pledge of all or any part of the Net Revenues (as defined below) from the operation of such park or parks, or from the properties or facilities thereof and incident thereto, either or both. The Net Revenues of any one or more contracts, operation contracts, leases, or agreements theretofore or thereafter made

or to be made may be pledged as the sole, or as additional, security for the support of the Bonds. Any other revenue, other than tax revenue, as may be specified in the Bond Order, may be pledged for the support of the Bonds. In any Bond Order, the right may be reserved in the county under conditions and terms therein specified for the issuance of additional Revenue Bonds which will be on a parity with, or subordinate to, the Revenue Bonds then being issued, either or both.

(d) The term "Net Revenues" as used in this Act shall mean the gross revenues from the operation of those properties and facilities of the park or parks, the net revenues of which properties and facilities are pledged for the support of the Bonds, after deduction of the necessary and reasonable expenses of operation and maintenance of such properties and facilities.

(e) From the proceeds of the Bonds, there may be set aside (as shall be prescribed in the Bond Order) an amount for payment of interest on the Bonds estimated to accrue during the construction period and, in addition, such reserve moneys for the benefit of the payment of the Bonds as may be deemed proper (which reserve moneys may be placed into the interest and sinking fund or into a separate reserve fund, as shall be prescribed in the Bond Order). Also, from said proceeds there shall be paid all expenses necessarily incurred in issuing and selling such Bonds. The remainder of such proceeds shall be used for the purposes specified in the Bond Order and in the Bonds.

(f) Said Bonds shall not be, and shall never be construed to be, a debt of the county or of the State of Texas, but shall be payable solely and only from the revenues pledged to their payment as herein provided. No principal of or interest on such Bonds or any refunding bonds issued to refund such Bonds shall be a debt against the tax revenues of such county, but solely a charge upon the pledged revenues. Such Bonds or refunding bonds shall never be reckoned in determining the power of the county to incur obligations payable from taxation. Each such Bond shall contain on its face substantially the following provision: "The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation."

(g) So long as any of the Revenue Bonds are outstanding no other obligations shall be issued against the pledged revenues except to the extent and in the manner expressly permitted in the Bond Order.

(h) No such bonds shall ever be issued unless authorized by a majority vote of duly qualified resident voters of said county who own taxable property within said county and who have duly rendered the same for taxation, voting at an election called for such purpose by the Commissioners Court, which election shall be called and held and notice thereof given as is provided in Chapter 1, Title 22, Revised Civil Statutes of Texas, 1925, as amended, except that the proposition to be submitted shall not provide for the levy of any tax whatsoever, and the ballot shall be substantially as follows:

"FOR the issuance of \$\_\_\_\_\_ park revenue bonds payable solely from revenues."

"AGAINST the issuance of \$\_\_\_\_\_ park revenue bonds payable solely from revenues."

(i) After any Bonds have been authorized by the Commissioners Court, such Bonds and the record relating to their issuance shall be submitted to the Attorney General of Texas for his examination and approval, and it shall be the duty of the Attorney General to approve such Bonds when issued in accordance with this Act. After such Bonds have been

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

approved by the Attorney General, they shall be registered by the Comptroller of Public Accounts of Texas. When any such Bonds have been approved by the Attorney General, registered by the Comptroller of Public Accounts, and delivered to the purchasers, they shall thereafter be incontestable. When any Bonds recite that they are secured partially or otherwise by a pledge of the proceeds of or income from any contract, lease, or other agreement, a copy of such contract, lease, or other agreement and of the proceedings authorizing the same may be submitted to the Attorney General along with the Bond record, and in such event the approval of the Attorney General of the Bonds shall constitute an approval of such contract, lease, or other agreement, and thereafter the same shall be incontestable except for forgery or fraud.

#### Refunding bonds

Sec. 13. Revenue Bonds which likewise will be fully negotiable may be issued by the Commissioners Court for the purpose of refunding Bonds issued under this Act, and no election shall be necessary for the issuance of such refunding bonds. The refunding bonds may be secured in the manner provided in this Act for securing original Revenue Bonds. Such refunding bonds may be issued to refund bonds of more than one series or issue of such outstanding Bonds and combine pledges for the outstanding Bonds for the security of the refunding bonds, and such refunding bonds may be secured by other and additional revenues; provided, that such refunding bonds will not impair the contract rights of the holders or any of the outstanding Bonds which are not to be refunded. Refunding bonds shall be authorized by order of the Commissioners Court, and shall be executed and mature as is provided in this Act for original Bonds. They shall bear interest at the same or lower rate than that of the Bonds refunded unless it is shown mathematically that a saving will result in the total amount of interest to be paid. They shall be approved by the Attorney General as in the case of original Bonds, and shall be registered by the Comptroller upon surrender and cancellation of the Bonds to be refunded, but in lieu thereof, the order authorizing their issuance may provide that they shall be sold and the proceeds thereof deposited in the place or places where the original Bonds are payable, in which case the refunding bonds may be issued in an amount sufficient to pay the interest on the original Bonds to their option or maturity date, and the Comptroller shall register them without the surrender and cancellation of the original Bonds. All such refunding bonds, after they have been approved by the Attorney General and registered by the Comptroller, shall be incontestable.

#### Expenses; fees and tolls

Sec. 14. (a) The necessary and reasonable expenses of operation and maintenance of the properties and facilities whose revenues are pledged to the payment of the Revenue Bonds shall always be a first lien on and charge against the income thereof. So long as any of said Bonds or interest thereon remain outstanding, the Board shall charge and require the payment of fees, charges, and tolls for the use of such properties and facilities which shall be equal and uniform within classes and which shall yield revenues at all times at least sufficient to pay such expenses of operation and maintenance, and to provide for the payments prescribed in the Bond Order for the establishment and maintenance of the interest and sinking fund, reserve fund or funds, and such other funds as may be provided in such Bond Order, and the Bond Order may include and make any additional covenants with respect to the Bonds and the pledged revenues



and the operation, maintenance, and upkeep of those improvements and facilities, the income of which is pledged.

(b) The Board is authorized to determine the rates, charges, and tolls which must be charged by it for the use, operation, or lease of such properties and facilities.

(c) It shall be the duty of the Commissioners Court to see that the rates, charges, and tolls charged by the Board are sufficient to comply with the terms and provisions of this Section 14 and of Section 15 following, and if for any reason the same are not so sufficient, then the Commissioners Court shall have the duty to, and shall, impose additional rates, charges, and tolls so that there will be revenues sufficient at all times for the purposes set forth in this Section 14 and in Section 15 following, which additional rates, charges, and tolls will govern over those fixed by the Board.

#### Provisions applicable to bonds

Sec. 15. The following provisions shall be applicable to Revenue Bonds and refunding bonds issued under this Act:

(a) It shall be the duty of the Board to fix such rates, charges, and tolls for the use of the properties and facilities whose revenues are thus pledged as will yield revenues fully sufficient at all times to operate and maintain such properties and facilities, to pay the interest on and principal of the Bonds, and to make any and all other payments or deposits as provided in or required by the Bond Order. In the event any part of the security for the Revenue Bonds consists of money to be received by the Board as consideration for properties or facilities belonging to the county but operated by others than the Board under some form of lease or operating contract, it shall be the duty of the Board to fix and authorize rates, charges, and tolls to be made by such other person or persons for services rendered or to be rendered by such properties or facilities, at least sufficient to assure receipt by the Board of money which the Board is committed to pay from such source for the benefit of the Revenue Bonds under the Bond Order.

(b) The proceeds of the Bonds shall be used and shall be disbursed under such restrictions as may be provided in the Bond Order or in a separate escrow agreement, or in both such Order and escrow agreement, and there is hereby created and granted a lien upon such moneys until so applied, in favor of the holders of the Revenue Bonds or of any trustee provided for in respect to such Bonds. Any surplus remaining from the Bond proceeds after providing for the following: interest during construction and for such additional period as may be prescribed in the Bond Order, and creating any reserve fund or funds prescribed in said Order, and after paying all expenses relating to the issuance and sale and delivery of said Bonds, and after the accomplishment of the Bond purposes, shall be used for retiring the Bonds to the extent that they can be purchased at prevailing market prices, with any remainder after such purchase to be deposited into the interest and sinking fund of the Bonds.

(c) The Bond Order may provide that such Revenue Bonds shall contain a recital to the effect that they are issued pursuant to and in strict conformity with this Act, and such recital when so made shall be conclusive evidence of the validity of such Bonds and the regularity of their issuance.

(d) Any Revenue Bond issued pursuant to the provisions of this Act shall be exempt from taxation by the State of Texas or by any municipal corporation, county, or other political subdivision or taxing district or entity of the State.

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

(e) If so provided in the Bond Order, an indenture securing the Bonds may be entered into between, and executed by, the county and a corporate trustee, or entered into between, and executed by, the county and a corporate trustee and a corporate or individual co-trustee. Any such corporate trustee or corporate co-trustee shall be any trust company or bank within or without the State of Texas having the powers of a trust company.

(f) Either the Bond Order or indenture (if any), either or both, may contain such provisions for protecting or enforcing the rights or remedies of the Bondholders as may be considered by the Commissioners Court reasonable and proper and not in violation of law, including covenants setting forth the duties of the county and the Board in reference to maintenance, operation, repair, and insurance (including insurance against loss of use and occupancy) of the properties or facilities whose revenues are pledged, and the custody, safeguarding, and application of the Bond proceeds and of the revenues to be received from the operation of properties or facilities; and provide for the flow of funds, the establishment and maintenance of the interest and sinking fund, reserve fund or funds, and other funds, and may include such additional covenants with respect to the Bonds and the pledged revenues and the operation, maintenance, and upkeep of those properties and facilities the income of which is pledged, as the Commissioners Court may deem appropriate.

(g) It shall be lawful for any bank or trust company in this State to act as depository for the proceeds obtained from the sale of any Bonds, which depository shall be selected by the Commissioners Court, without the necessity of seeking competitive bids, and without reference to any other statute, which moneys shall be secured in the manner and amount as may be prescribed by the Commissioners Court or by the Bond Order, indenture (if any), or separate escrow agreement.

(h) The Bond Order shall provide for and designate the depository or depositories of the interest and sinking fund, reserve fund or funds, and any other funds established by such Order, and such depository or depositories may be any bank or trust company within or without the State of Texas, and in this connection, such depository or depositories may be selected and designated without the necessity of seeking competitive bids, and without reference to any other statute. The moneys in such funds shall be secured in the manner and to the extent as provided in the Bond Order, and in this connection the Bond Order may provide that such moneys shall be secured by direct obligations of the United States Government or obligations unconditionally guaranteed by the United States Government.

(i) The Bond Order and indenture (if any), either or both, may set forth the rights and remedies of the Bondholders and of the Trustee, and may (subject to paragraph j immediately following this paragraph i) restrict the individual rights of action of the Bondholders; may set forth and contain such other provisions and covenants as may be deemed reasonable and proper for the security of the Bondholders, including, but without limitation, provisions prescribing happenings or occurrences which constitute events of default and the terms and conditions upon which any or all of the Bonds shall become due, or may be declared to be due, before maturity, and as to the rights, liabilities, powers, and duties arising from the breach by the Board or by the Commissioners Court of any of its duties or obligations.

(j) Any holder or holders of any Bonds issued hereunder or of interest coupons originally attached thereto, may either at law or in equity, by suit, action, mandamus, or other proceeding, enforce and compel

performance of all duties required by this Act to be performed by the Board or by the Commissioners Court, including the making and collection of reasonable and sufficient fees, charges, and tolls for the use of the properties and facilities the income of which is pledged, the segregation of the income and revenues of such properties and facilities, and the application of such income and revenues pursuant to the provisions of the Bond Order and indenture (if any) and this Act.

(k) The Bond Order or the indenture (if any), either or both, may contain provisions to the effect that so long as any Bonds are outstanding either as to principal or interest, no free service shall be rendered by any of the properties or facilities the income of which is pledged.

(l) All Bonds issued under this Act shall be and are hereby declared to be, and to have all the qualifications of, negotiable instruments under the Negotiable Instruments Law of the State of Texas, and all such bonds shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, guardians, and for the sinking funds of cities, towns, villages, counties, school districts, and other political subdivisions or corporations of the State of Texas. Such Bonds shall be eligible to secure the deposit of any and all public funds of the State of Texas, and any and all public funds of cities, towns, villages, counties, school districts, and other political subdivisions or corporations of the State of Texas; and such Bonds shall be lawful and sufficient security for said deposits to the extent of their face value when accompanied by all unmatured coupons appurtenant thereto.

(m) The provisions contained in the Bond Order and in the indenture (if any) and the applicable provisions of this Act shall constitute an ir-repealable contract between the Board and the Commissioners Court, on the one part, and the holders of the Bonds, on the other part.

**Annual financial statement; budget; operation without appropriation**

"Sec. 16. On or immediately after January 1st of each year, the Board shall prepare and file with the Commissioners Court a complete statement showing the financial status of the Board and the properties, funds, and indebtedness under the administration of said Board. Said statement shall be so prepared as to show separately all information concerning the Revenue Bonds, the gross revenues from properties or facilities the net revenues of which are pledged to the payment of the Revenue Bonds, and the expenditures from said gross revenues, and all information concerning moneys which may have been appropriated by the county for operational and maintenance expenses. Concurrently with the filing of such statement with the Commissioners Court, the Board shall file with the County Auditor (a) a copy of said statement, and (b) a proposed budget of its needs for the then current calendar year. The County Auditor shall include such proposed budget as a part of the county budget prepared and submitted to the Commissioners Court under the provisions of House Bill No. 958, page 144, Acts of the Forty-sixth Legislature of Texas, Regular Session, 1939, as the same is now or hereafter may be amended. In this connection it shall be the duty of the Board to operate the properties or facilities the net revenues of which are pledged to the payment of Revenue Bonds so that the gross revenues derived from the operation of such properties or facilities will be sufficient to pay the operation and maintenance expenses of such properties and facilities and make all payments required under the Bond Order for the benefit of such Bonds (thereby making it unnecessary to appropriate tax moneys for such operation and maintenance expenses and Revenue Bond payments).

**Invalidity of establishment; exercise of powers by commissioners court**

Sec. 17. In the event that the establishment hereunder of any Board of Park Commissioners be declared by the courts to be invalid or unconstitutional, then all the powers granted to and duties imposed upon such Board by this Act shall be exercised and performed by said Commissioners Court, and all acts of such Board prior to its being so declared to be invalid shall be deemed to have been the acts of said Court.

**Powers and duties with respect to other parks**

Sec. 18. The Commissioners Court of any county covered by this Act may from time to time adopt the provisions hereof with respect to another park or parks and may exercise the powers granted by and perform the duties specified in this Act with respect to such other park or parks, and may appoint another Board of Park Commissioners for such other park or parks, all as provided in Section 2 and in the remainder of this Act. The Commissioners Court may also transfer to a previously created Board jurisdiction and control of an additional park or parks, provided that the same will not impair the contract rights of the holders of any outstanding Revenue Bonds. With respect to such other park or parks, the powers granted by this Act shall be exercised in such a manner so as not to infringe in any way upon the contract rights of the holders of then outstanding Revenue Bonds, and such other park or parks shall not be operated or maintained in any manner which would compete with or reduce the revenues of any park properties or facilities the income of which has been pledged to the payment of any then outstanding Revenue Bonds.

**Law cumulative; conflict with other law**

Sec. 19. This Act is cumulative of all other laws relating to county parks, but this Act shall take precedence in the event of conflict.

**Partial invalidity**

Sec. 20. In case any one or more of the Sections or provisions of this Act, or the application of such sections or provisions to any situation, circumstance, or person, shall not affect any other sections or provisions of this Act or the application of such sections or provisions to any other situation, circumstance, or person, and it is intended that this Act shall be construed and applied as if such section or provision had not been included herein for any constitutional application. Acts 1957, 55th Leg., 1st C.S., p. 7, ch. 7 as amended Acts 1959, 56th Leg., p. 1036, ch. 478, § 1.

Emergency. Effective May 30, 1959.

Validation: Section 2 of the amendatory Acts of 1959, provided: "All acts and proceedings had or performed by counties and the Commissioners Courts thereof under said Chapter 7, Acts of the Fifty-fifth Legislature, First Called Session, 1957, prior to its amendment by this Act, and all acts and proceedings had or performed by the Boards of Park Commissioners of said counties under said Chapter 7 are hereby in all things validated; and all revenue

bonds heretofore voted in such counties under said Chapter 7, and all the proceedings relating thereto, are hereby in all things validated. It is expressly provided, however, that this Section shall have no application to litigation pending upon the effective date hereof questioning the validity of any of the matters hereby validated if such litigation is ultimately determined against the validity of the same."

Section 3 contained a severability clause.

Art. 6079f. Adjacent counties having population of 350,000 or more

**Applicability of law**

Section 1. The provisions of this Act are applicable to any two (2) adjacent counties in this State each having a population of three hundred fifty thousand (350,000) or more according to the last preceding Federal Census.

**Joint park board; creation; powers**

Sec. 2. Any two (2) such counties, for the purpose of acquiring, improving, equipping, maintaining, financing, and operating any public parks or park, owned or to be acquired jointly by the two (2) such counties, may by order passed by the Commissioners Court of each of the two (2) such counties, create a Board to be designated "Joint Board of Park Commissioners," hereinafter sometimes in this Act referred to as the "Joint Board" or "Joint Park Board" and by resolution transfer to said Joint Board jurisdiction and control over any park or parks any part of which is within an area containing any part of the boundary separating the two (2) said counties and/or any park or parks entirely or wholly within either of the two (2) said counties. Any such Joint Board shall have the powers authorized in and shall perform the duties specified in this Act.

**Personnel of joint board; terms; vacancies; expenses**

Sec. 3. The Joint Board of Park Commissioners shall be composed of thirteen (13) Commissioners, consisting of a Chairman and twelve (12) members, to be appointed by the Governor with the advice and consent of the Senate. Six (6) members shall be appointed from each of the two (2) counties, and the Chairmanship shall alternate between the two (2) counties as hereinafter provided. Three (3) of the members who are first appointed from each county shall be designated by the Governor to serve for terms of one (1) year and three (3) shall be designated to serve for terms of two (2) years from the date of their appointments, and thereafter each of the twelve (12) members shall be appointed for a term of office of two (2) years. At the time of the creation of the Joint Board the Governor shall appoint a Chairman from the county having the larger population according to the last preceding Federal Census, who shall be appointed for a term of two (2) years from the date of his appointment; and upon the expiration of the two-year term of the Chairman who is first so appointed, the Governor shall appoint a Chairman from the county having the smaller population at the time of the creation of the Board, to serve for a term of two (2) years; and the Chairmanship of the Joint Board shall alternate thusly between the two (2) counties every two (2) years. No Joint Park Commissioner may be an officer or employee for either of the two (2) counties for which the Joint Board of Park Commissioners is created, or an officer or employee of any incorporated city located in either of said counties. A Joint Park Commissioner shall hold office until his successor has been appointed and qualified. Vacancies on the Joint Board of Park Commissioners shall be filled by appointment by the Governor. Each Joint Park Commissioner shall be compensated for all necessary expenses, including traveling, incurred in performing his duties as Joint Park Commissioner; when an account shall thus have been approved by the Commissioners Court of his county it will be paid in due time by the Joint Board's check or warrant.

**Oath and bond**

Sec. 4. Each Joint Park Commissioner so appointed shall within fifteen (15) days after his appointment qualify by taking the official oath and by filing a good and sufficient bond with the County Clerk of his county, payable to the order of the County Judge of such county, and approved by the Commissioners Court of such county. Such bond shall be in the sum prescribed heretofore by the Commissioners Court of such county, but not less than Five Thousand Dollars (\$5,000). Said bond shall be conditioned upon the faithful performance of the duties of such Joint Park Commissioner, including the proper handling of all moneys that may come into his hands in his capacity as a Joint Park Commissioner; the cost of said bonds shall be paid by the Joint Board.

**Powers vested in commissioners; quorum; necessary vote;  
officers; meetings; funds**

Sec. 5. The powers under this Act shall be vested in the Joint Board of Park Commissioners as constituted from time to time. Seven (7) Joint Park Commissioners shall constitute a quorum of the Joint Board for the purposes of conducting its business and exercising its powers, and for all other purposes, provided that at least three (3) of the said Joint Park Commissioners shall be present from each of the two (2) such counties. The action of the Joint Board may be taken by a majority vote of the Joint Park Commissioners present. The Joint Board shall elect from among its own members a Vice-Chairman who shall not represent the same county as the Chairman of the Joint Board; a Secretary and a Treasurer, provided that the Treasurer shall not represent the same county as the Secretary, and these officers shall serve for terms of two (2) years. In the absence or unavailability of either the Secretary or the Treasurer the other such officer may act for and perform all of the duties of such absent or unavailable officer during such period of absence or unavailability. The Joint Board shall hold regular meetings at times to be fixed by the Joint Board and may hold special meetings at such other times as the business or necessity may require. The money belonging to or under control of the Joint Board shall be deposited and shall be secured substantially in the manner prescribed by law for county funds.

**Depositories; warrants or checks; employees and agents;  
legal services; seal**

Sec. 6. The depository or depositories for such funds shall be selected by the Joint Board with the approval of the Commissioners Court of each of the two (2) such counties. Warrants or checks for the withdrawal of money shall be signed by an officer of the Joint Board and one (1) other Joint Park Commissioner both of whom shall be duly designated by resolution of the Joint Board, or, when duly designated by resolution entered in the minutes of the Joint Board, by two (2) bonded employees of the Joint Board. The Joint Board may employ secretaries, stenographers, bookkeepers, accountants, technical experts, and such other agents and employees, permanent or temporary, as it may require and shall determine their qualifications, duties, and compensation. In addition the Joint Board may also employ and compensate a manager for any park or parks and may give him full authority in the management and operation of the park or parks subject only to the direction and orders of the Joint Park Board. The County Attorney or Criminal District Attorney of either of the two (2) such counties shall perform all the necessary legal services for such Joint Board of Park Commissioners. The Joint Board shall adopt

a seal which shall be placed on all leases, deeds, and other instruments which are usually executed under seal, and on such other instruments as may be required by the Joint Board.

#### Personal interest

Sec. 7. No Joint Park Commissioner or employee of the Joint Board shall acquire any pecuniary interest, direct or indirect, in any improvements, concessions, equipment or any business located within the confines of or in any way related to any public park administered by such Joint Board, nor shall he have any interest, direct or indirect, in any contract or proposed contract for construction, materials or services in connection with or related to any park under control of the Joint Board.

#### Records

Sec. 8. The Joint Board of Park Commissioners shall keep a true and full account of all its meetings and proceedings and preserve its minutes, contracts, accounts, and all other records in a fireproof vault or safe. All such records shall be the property of the Joint Board and shall be subject to inspection by the Commissioners Court of either of the two (2) such counties at all reasonable times during office hours on business days.

#### Contracts, leases and agreements; disbursement of funds

Sec. 9. Such Joint Board shall have full and complete authority to enter into any contract, lease or other agreement connected with or incident to or in any manner affecting the acquisition, financing, construction, equipping, maintaining, or operating all facilities located or to be located on or pertaining to any park or parks under its control. It shall also have authority to disburse and pay out all funds under its control for any lawful purpose for the benefit of any such park or parks.

#### Contracts, leases and agreements necessary and convenient

Sec. 10. Such Joint Board shall have general power and authority to make and enter into all contracts, leases and agreements which said Joint Board shall deem necessary and convenient to carry out any of the purposes and powers granted in this Act. Any such contract, lease or agreement may be entered into, with any person, real or artificial, any corporation, municipal, public or private, any governmental agency or bureau, including the United States Government and the State of Texas, and may make contracts, leases, and agreements, with any such persons, corporation or entities for the acquisition, financing, construction or operation of any facilities in, connected with or incident to any such park. Any and all contracts, leases and agreements herein authorized, to be effective, shall be approved by resolution of the Joint Board and shall be executed by its Chairman or Vice-Chairman and attested by its Secretary or Treasurer.

#### Suits

Sec. 11. Such Joint Board shall have the right to sue and be sued in its own name.

#### Revenue bonds

Sec. 12. (a) For the purpose of providing funds to acquire, improve, equip and repair such park or parks, or for the acquisition by construction or otherwise of any facilities to be used in or connected with or incident to any such park or parks, or for any one or more of such purposes, the

Joint Board shall have the power from time to time and is hereby authorized by resolution (hereinafter sometimes called the "Resolution"), to procure the issuance of revenue bonds, hereinafter sometimes called the "Revenue Bonds," which shall be fully negotiable instruments under the Uniform Negotiable Instruments Law and all other laws of Texas. Included but without limiting, among the permanent improvements and facilities which may be acquired through the issuance of Revenue Bonds are the following: stadia, coliseums, auditoriums, athletic fields, pavilions, and building and grounds for assembly, together with parking facilities and other improvements incident thereto. Provided that no Revenue Bonds shall be issued under authority of such Resolution unless and until said Resolution shall have first been approved by the Commissioners Courts of each of the two (2) such counties, evidenced by an order to that effect and approved by a vote of the qualified taxpaying voters in each of the two (2) such counties as hereinafter provided. Such Revenue Bonds shall be issued in the name of the two (2) such counties, signed by the County Judge of each of the two (2) such counties and attested by the County Clerk and ex officio clerk of the Commissioners Court of each of the two (2) such counties. They shall have impressed thereon the seal of the Commissioners Court of each of the two (2) such counties, shall mature serially or otherwise in not to exceed forty (40) years and may be sold by the Joint Board at a price and under terms determined by the Joint Board to be the most advantageous reasonably obtainable, provided that the average interest cost, taking into consideration the maturity date or dates of the Revenue Bonds calculated by the use of standard bond interest cost, taking into consideration the maturity date or dates of the Revenue Bonds calculated by the use of standard bond interest tables currently in use by insurance companies and investment houses, shall not exceed six per cent (6%) per annum. The Resolution authorizing the issuance of the bonds, rendered effective by the approving order of the Commissioners Court of each of the two (2) said counties, shall prescribe the details as to the Revenue Bonds. It may contain provisions for the calling of the Revenue Bonds for redemption prior to their respective maturity dates at such prices and at such times as may be prescribed in such Resolution, but except for such rights of redemption expressly reserved in the Resolution and in the Revenue Bonds they shall not be subject to redemption prior to their scheduled maturity date or dates. The bonds may be made payable at such times and at such places, within or without the State of Texas, as may be prescribed in the Resolution, and they may be made registerable as to principal, or as to both principal and interest.

(b) The Revenue Bonds may be issued in one or more series from time to time as required for carrying out the purposes of this Act.

(c) The bonds may be secured by a pledge of all or a part of the Net Revenues (as defined in Section 12(d) hereof) from the operation of such park or parks, or the facilities thereof and incident thereto, or by a pledge of the net revenues both from said park or parks and said facilities or any one or more thereof. The net revenues of any one or more contracts, operating contracts, leases or agreements theretofore or thereafter made or to be made may be pledged as the sole, or as additional security, for the support of the bonds. Any other revenue other than tax revenue may be specified in the Resolution of the Joint Board or may be pledged as additional security for the bonds. In any such Resolution the Joint Board may reserve the right under conditions therein specified to issue additional bonds which will be on a parity with, or subordinate to the bonds then being issued.



(d) The term "Net Revenues" as used in this Section and in this Act shall mean the gross revenues from the operation of the park or the parks, and the facilities thereof, leases, agreements and contracts, and incidents thereto, or from any one or more thereof, whose revenues shall have been thus pledged, after deduction of the necessary expenses as defined in Section 14 hereof.

(e) From the proceeds of the Revenue Bonds the Joint Board may set aside, as shall be prescribed in the Resolution, an amount for payment of interest estimated to accrue during the construction period and in addition thereto such reserve for the interest and sinking fund as may be deemed proper. From the proceeds of the Revenue Bonds all expenses necessarily incurred in issuing and in selling the Revenue Bonds shall be paid. The remainder of such proceeds shall be used for the purposes specified in the Resolution, and comprehended by the purposes permitted under Section 12(d) of this Act.

(f) Said bonds shall never be construed to be a debt of either of the two (2) such counties or of the two (2) such counties jointly or collectively or the State of Texas within the meaning of any constitutional or statutory provisions, but shall be payable solely and only from the revenues pledged to their payment as herein provided. No principal or interest on such bonds or any refunding bonds shall ever be a debt against the tax revenues of either of the two (2) such counties or of the two (2) such counties jointly or collectively, but solely a charge upon the pledged revenues. Such bonds shall never be reckoned in determining the power of either of the two (2) such counties to incur obligations payable from taxation. Each Revenue Bond shall contain on its face substantially the following provisions:

"The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation".

(g) So long as any of the Revenue Bonds are outstanding no additional bonds of equal dignity shall be issued against the pledged revenues except to the extent and in the manner expressly permitted in the Resolution.

(h) No such bonds shall ever be issued or sold unless authorized by a majority of the resident qualified taxpaying voters of each of the two (2) such counties who own taxable property in said county of residence who have duly rendered the same for taxation, voting at an election called for such purpose, which election shall be held and notice thereof given as is provided in Chapter 1, Title 22, Revised Civil Statutes of Texas, 1925, as amended, except that the proposition to be submitted shall not provide for the levy of any tax whatsoever, and the ballot shall so provide, and be substantially as follows:

"FOR the issuance of \$—— in bonds for the purpose of —— which bonds and the interest thereon shall be payable solely from revenues from the operation of such facilities and not from tax revenues."

"AGAINST the issuance of \$—— in bonds for the purpose of —— which bonds and the interest thereon shall be payable solely from revenues from the operation of such facilities and not from tax revenues."

(i) Before any such bonds are delivered to the purchaser they shall be submitted to the Attorney General along with the record pertaining thereto for his examination and approval. It shall be the duty of the Attorney General to approve the Revenue Bonds when issued in accordance with this Act. Bonds thus approved by the Attorney General and registered within the office of the Comptroller of Public Accounts shall be incontestable.

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

(j) Notwithstanding any of the provisions of this law the Revenue Bonds permitted by Section 12 hereof to be issued, or the refunding bonds permitted by Section 13 hereof to be issued, shall be authorized by an order passed by the Commissioners Court of each of the two (2) such counties, on their own motion, and by such order the said Commissioners Courts of the two (2) such counties acting jointly and together may make such covenants on behalf of the two (2) such counties as the said two (2) Courts may deem necessary and advisable, and said two (2) Courts shall perform or cause to be performed any covenants thus made. The provisions of this Section 12(j) shall take precedence over any other provisions of this law that may be in conflict herewith or contrary thereto.

#### Refunding bonds

Sec. 13. Revenue Bonds which likewise will be fully negotiable, may be issued by Resolution first adopted by the Joint Board and thereafter approved by order of the Commissioners Court of each of the two (2) such counties for the purpose of refunding bonds issued under this Act. The refunding bonds may be secured in the manner provided in this Act for securing original Revenue Bonds. No election shall be required for the issuance of any refunding bonds. Such refunding bonds may be sold and the proceeds used to retire the original bonds, or may be issued in exchange for the original bonds, as may be provided in the Resolution authorizing their issuance.

#### Expenses; rates, charges and tolls

Sec. 14(a). The expense of operation and maintenance of facilities whose revenues are pledged to the payment of the bonds shall always be a first lien on and charge against the income thereof. So long as any of said bonds or interest thereon remain outstanding the Joint Board shall charge or require the payment of fees and tolls for the use of such facilities which shall be equal and uniform within classes defined by the Joint Board and which shall yield revenues at least sufficient to pay the expenses of such operation and maintenance, and to provide for the payments prescribed in the Resolution for "Debt Service" as that term may be defined in the Resolution (which without limitation may include provisions for any or all of the following: The payment of principal and interest as such principal and interest respectively mature, the establishment and maintenance of funds for extensions and improvements, and operating reserve, and an interest and sinking fund reserve).

(b) The Joint Board is authorized to determine the rates, charges and tolls which must be charged by it for the use, operation or lease of such facilities.

#### Provisions applicable to bonds

Sec. 15. The following provisions shall be applicable as to Revenue Bonds issued under this Act:

(a) It shall be the duty of the Joint Board to fix such tolls and charges for the use of the facilities whose revenues are thus pledged as will yield revenues fully sufficient to operate and maintain such facilities and to permit full compliance by the Joint Board with the covenants contained in the Resolution for the making of payments into the Debt Service Fund, including payments into any reserve accounts or funds created in the Resolution in connection with the issuance of the Bonds. In the event that any part of the security for the Revenue Bonds consists of money to be received by the Joint Board as consideration for facilities belonging to the Joint Board but operated by another or others under some form of lease or operating contract, it shall be the duty of the Joint Board to fix and authorize rates, charges and tolls to be made by such person or per-

sons for services to be rendered by such facilities, at least sufficient to assure the receipt by the Joint Board of money which the Joint Board is committed to pay from such source for Debt Service under the terms of the Resolution.

(b) The proceeds of the bonds shall be used and shall be disbursed under such restrictions as may be provided in the Resolution, and there shall be and there is hereby created and granted a lien upon such moneys, until so applied, in favor of the holders of the Revenue Bonds or of any trustee provided for in respect to such bonds, but neither the depository of such funds nor the trustee shall be obligated to see to the proper application of such fund except as expressly provided in the Resolution or in the indenture securing the bonds. Any surplus remaining from the bond proceeds after providing for the following: interest during construction and for such additional period as may be prescribed in the Resolution, and the creating of any reserve fund prescribed in the Resolution, and the accomplishment of the bond purpose, shall be used for retiring the bonds to the extent that they can be purchased at prevailing market prices, with any remainder after such purchase to be deposited in the fund established in the Resolution for Debt Service.

(c) The Resolution may provide that such Revenue Bonds shall contain a recital that they are issued pursuant to and in strict conformity with this Act and such recital when so made shall be conclusive evidence of the validity of the Revenue Bonds and the regularity of their issuance.

(d) Any Revenue Bond issued pursuant to the provisions of this Act shall be exempt from taxation by the State of Texas or by any municipal corporation, county, or other political subdivision or taxing district of the State.

(e) If so provided in the Resolution an indenture securing the bonds may be executed by and between the two (2) such counties and a corporate trustee, and such Resolution may provide also for execution of the indenture by a corporate or individual co-trustee. Any such corporate trustee or corporate co-trustee shall be any trust company or bank within or without the State of Texas having the powers of a trust company.

(f) Either the Resolution or such indenture may contain such provisions for protecting or enforcing the rights or remedies of the bondholders as may be considered by the Joint Board reasonable and proper and not in violation of law, including covenants setting forth the duties of the Joint Board in reference to maintenance, operation or repair, and insurance (including within the discretion of the Joint Board insurance against loss of use and occupancy) of the facility whose revenues are pledged, and the custody, safeguarding and application of all moneys received from the sale of the Revenue Bonds, and from revenues to be received from the operation of the project.

(g) It shall be lawful for any bank or trust company in this State to act as depository for the proceeds of the bonds or revenues derived from the operation of facilities whose revenues may be pledged, or for the special funds created to assure payment of principal and interest on the Revenue Bonds, including reserve funds and accounts, or for one or more of such classes of deposits, and to furnish such indemnity bonds or to pledge such securities as may be required by the Joint Board.

(h) The Joint Board may select such depository or depositories without the necessity of seeking competitive bids. Such deposits shall be secured in the manner required by law for the security of money belonging to counties. Provided that the Joint Board in the Resolution or the indenture securing the Revenue Bonds may bind the Joint Board to the use of direct obligations of the United States Government or obligations unconditionally guaranteed by the United States Government as security for

such deposits. Such indenture, or ordinance, may set forth the rights and remedies of the bondholders and of the Trustee and may restrict the individual rights of action of the bondholders. The Resolution may contain all other suitable provisions such as the Joint Board may deem reasonable and proper for the security of the bondholders, including but without limitation covenants prescribing all happenings or occurrences which constitute events of default and the terms and conditions upon which any or all of the bonds shall become, or may be declared to be due before maturity, and as to the rights, liabilities, powers and duties arising from the breach by the Joint Board of any of its duties or obligations.

(i) That any holder or holders of the Revenue Bonds issued hereunder, including a trustee or trustees for such holders, shall have the right in addition to all other rights by mandamus or other proceedings in any court of competent jurisdiction to enforce his or their rights against the Joint Board or its employees, the agents and employees thereof, or any lessee of any of said facilities whose revenues are pledged, including but not limited to the right to require the Joint Board to impose and establish and enforce sufficient and effective tolls and charges to carry out the agreements contained in the Resolution and indenture, or in both the Resolution and indenture, and to perform all agreements and covenants therein contained and duties arising therefrom, and in the event of default as defined in the Resolution authorizing the Revenue Bonds or in the indenture securing the Revenue Bonds to apply for and obtain the appointment of a receiver for any of the properties involved. If such receiver be appointed he shall enter and take possession of the facilities whose revenues shall have been pledged and until the Joint Board and the two (2) such counties may be no longer in default, or until relieved by the court, retain possession of the properties involved and collect and receive all revenues and tolls arising therefrom in the same manner as the Joint Board itself might do, and shall dispose of all such moneys and apply same in accordance with the obligations of the Joint Board under the Resolution or indenture, and as the court may direct. Nothing in this Act shall authorize any bondholder to require the Joint Board to use any funds in the payment of the principal or of interest on the bonds except from the revenues pledged for their payment.

(j) The Resolution or the indenture securing the bonds may contain provisions to the effect that so long as the revenues of such park facilities are pledged to the payment of Revenue Bonds no free service shall be rendered by any of such facilities of the park for which tolls, charges and rentals are to be effective under the Resolution.

(k) All such revenue bonds shall be and are hereby declared to be legally authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, and for the sinking funds and other funds of the State of Texas. Such bonds shall be eligible to secure the deposit of any and all municipal corporations, counties, political subdivisions, public agencies, and taxing districts within the State of Texas, and such bonds shall be lawful and sufficient security for such deposits to the extent of their face value when accompanied by all unmatured coupons appurtenant thereto.

(l) The provisions contained in the Resolution and in the indenture and the applicable provisions of this Act shall constitute an irrevocable contract between the Joint Board and the two (2) such counties on the one part and the holders of such bonds on the other part.

**Leases or operating agreements made prior to, or concurrently with,  
authorization of bonds**

Sec. 16. At any time prior to the authorization of Revenue Bonds secured by a pledge of the revenues from any designated facility or facili-

ties of the park or parks, the Joint Board may with the approval of the Commissioners Court of each of the two (2) such counties and for such period of time as it may determine make a contract or lease agreement with a company, corporation, or individual, for the operation of such facility, or facilities, the consideration for such contract or lease agreement to be specified, or the method of determining such consideration to be prescribed in such contract or lease agreement. The revenues from any such contract or agreement may be pledged in the Resolution or indenture as security or additional security for the Revenue Bonds. Any such facility or facilities may likewise be leased under such contract or lease agreement concurrently with the authorization of the issuance of said Revenue Bonds, and the revenues therefrom pledged as security or additional security for the Revenue Bonds; and in the event that issuance of said Revenue Bonds is authorized concurrently with the contract or lease agreement then the revenues from such contract or agreement shall constitute the sole or substantially all of the security for the Revenue Bonds. Such contract or agreement must provide that the rentals, tolls and charges to be enforced by such lessee for the use or services provided by such facility or facilities shall be sufficient at least to yield in the aggregate money necessary to pay the reasonable operation and maintenance expenses to assure proper operation and maintenance of such facility or facilities, plus an amount which will assure income to the Joint Board to permit and assure payments into the several funds and accounts in the manner, at the times and in the amounts specified in the Resolution. Any such lease agreement or contract may provide that such rentals, tolls and charges may be sufficient to yield a reasonable profit to the other party to the lease agreement or contract, but to be realized only after payment in full of the obligation to the Joint Board; any such operating or lease contract may provide for payment of the annual consideration or rental in monthly installments approximately equal and that failure to pay any required sum when due may be declared to be a breach of contract or agreement, entitling the Joint Board under regulations prescribed therein to declare the contract or agreement forfeited and to take over the operation and maintenance of such facility or facilities, but such remedy shall be cumulative of all others therein provided or recognized.

**Annual financial statement; budget; operation without  
seeking appropriation**

Sec. 17. Before July 1st of each year the Joint Board shall prepare and not later than July 1st, file with the County Judge of each of the two (2) such counties, a complete statement showing the financial status of the Joint Board, its properties, funds and indebtedness. The statement shall be so prepared as to show separately all information concerning the Revenue Bonds, the income from pledged facilities, and expenditures of such revenues, and all information concerning moneys which may have been appropriated to the Joint Board by the Commissioners Court of each of the two (2) such counties for operational and maintenance expenses. Concurrently with the filing of such statement, the Joint Board shall file with the County Judge of each of the two (2) such counties a proposed budget of its needs for the next succeeding calendar year. After approval of such budget, the County Judge of each of the two (2) such counties shall incorporate one-half ( $\frac{1}{2}$ ) of the total amount of the same in the county budget to be prepared by him during the month of July of each year. As a part of each of the two (2) such counties' tentative budgets, the items thus certified by the Joint Board shall be subject to the procedure for the county budget of each of the two (2) such counties prescribed

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

by Chapter 206, Acts of the Regular Session of the Forty-second Legislature, Sections 10 to 13, both inclusive, carried forward in Vernon's Annotated Statutes as Articles 689a-9 to 689a-12. It shall be the duty of the Joint Board to so operate said park or parks that there will be available from the gross revenues received from the operation of park facilities whose revenues are pledged to the payment of Revenue Bonds money sufficient to pay the operation and maintenance expenses of said facilities without the appropriation of tax money for the expense of maintaining and operating such facilities.

#### Rules and regulations

Sec. 18. The Joint Board shall have the power to adopt and promulgate all reasonable regulations and rules, applicable to tenants, concessionaries, residents and users of park facilities, regulating hunting, fishing, boating and camping and all recreational and business privileges in any such park or parks.

#### Acceptance of grants and gratuities

Sec. 19. The Joint Board is hereby authorized to accept grants and gratuities in any form from any source approved by the Joint Board and the United States Government or any agency thereof, the State of Texas the Commissioners Court of each of the two (2) such counties including or any agency thereof, any private or public corporation; and any other person, for the purpose of promoting, establishing and accomplishing the objectives and purposes and powers herein set forth.

#### Exercise of powers by Commissioners Court

Sec. 20. (a) In the event the County Commissioners Court of either of the two (2) such counties as hereinbefore defined, does not pass a Resolution authorizing the establishment of such Joint Board of Park Commissioners, the establishment of such Joint Board shall not be consummated.

(b) In the event the establishment of any such Joint Board of Park Commissioners be declared by the courts to be invalid, then the County Commissioners Courts of the two (2) such counties, acting jointly and together, are hereby expressly granted the right to ratify any or all of the actions taken by such Joint Board prior to the declaration of the invalidity of said Joint Board's establishment and to exercise any and all of the powers, acts and authority by this Act conferred, authorized and delegated to said Joint Board of Park Commissioners.

#### Law cumulative; conflict with other law

Sec. 21. This Act is cumulative of all other laws relating to county parks or to parks operated jointly by two (2) adjacent counties as hereinbefore defined, but this Act shall take precedence in the event of a conflict.

#### Partial invalidity

Sec. 22. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable. Acts 1959, 56th Leg., p. 234, ch. 137.

Emergency. Effective April 29, 1959.

Tex.St.Supp. '60-31

**TITLE 106—PATRIOTISM AND THE FLAG**

Art.  
6144e. Advertising resources of Texas  
[New].

**Art. 6144e. Advertising resources of Texas****Creation of the Texas Development Board**

Section 1. There is hereby created the Texas Development Board whose members shall be the Governor of Texas, acting as Chairman, the Chairman of the Texas Industrial Commission and the Chairman of the Texas Highway Commission.

**Duties of the Board**

Sec. 2. (a) The Texas Development Board shall be charged with the duty of submitting an advertising budget to the Legislature at each Regular Session, and shall establish the necessary procedure for close correlation of travel advertising which will be implemented and administered by the Texas Highway Department; and industrial advertising, which shall be implemented and administered by the Industrial Commission.

(b) The Texas Development Board shall submit a request to the Legislature at the beginning of each Regular Session recommending an appropriation from the General Fund to the Texas Highway Department for space advertising for the promotion of travel in the State of Texas, and an appropriation to the Texas Industrial Commission for space advertising and for the promotion of industrial expansion in the State of Texas.

(c) Any appropriation made by the Legislature to either the Industrial Commission or the Texas Highway Department, to carry out the purpose of this Act, in excess of One Hundred Thousand Dollars (\$100,000.00) for each year of the biennium, shall be matched by equal contributions from private sources and industry prior to any expenditure from said excess fund for a cooperative program of advertising. In order to prevent any corporation or enterprise from dominating any matching funds appropriated by the Legislature, no more than ten percent (10%) of said matching fund may be used during any one year for the purpose of fulfilling advertising agreements with any one individual, association, or corporation.

(d) The Texas Development Board shall have the approval of the employment of any advertising agency or agencies contracted to handle the advertising program by the Highway Department and the Industrial Commission as envisioned by this Act.

**Duties of the Texas Highway Department**

Sec. 3. (a) For the purpose of dissemination of information relative to highway construction, repair, maintenance, and upkeep, and for the purpose of advertising the highways of this state and attracting traffic thereto, the Department is empowered to compile and publish, for free distribution, such pamphlets, bulletins, and documents as it will deem necessary and expedient for informational and publicity purposes concerning the highways of the state, and with respect to public parks, recreational grounds, scenic places, and other public places and scenic areas or objects of interest, data as to distances, historical facts, and other items or matters of interest and value to the general public and road users; and said Department is authorized and empowered to make or cause to be made from time to time a map or maps showing thereon the highways of

the state and the towns, cities, and other places of interest served and reached by said highways, and may cause to be printed, published, and prepared in such manner or form as the Department may deem best, all of such information and data and provide for the distribution and dissemination of the same in such manner and method and to such extent as in the opinion of the Department will best serve the motoring public and road users. The Department shall maintain and operate Travel Information Bureaus at the principal gateways to Texas for the purpose of providing road information, travel guidance, and various descriptive materials, pamphlets, and booklets designed to furnish aid and assistance to the traveling public and stimulate travel to and within Texas. The Texas Highway Department is authorized and empowered to pay the cost of all administration, operation, and the cost of developing and publishing various material and the dissemination thereof, including the cost of operating Travel Information Bureaus from highway revenues. The Texas Highway Department is further empowered to receive and administer a legislative appropriation from the general fund for the specific purpose of purchasing advertising space in periodicals of national circulation, and/or time on broadcasting facilities. The Department shall have the power to enter into contracts with a recognized and financially responsible advertising agency, having a minimum of five years of experience in handling accounts of similar scope, and for the contracting of space in magazines, papers, and periodicals for the publication of such advertising information, historical facts, statistics and pictures as will be useful and informative to persons, and corporations outside the State of Texas, and shall have the power to enter into contracts with motion picture producers and others for the taking of moving or still pictures in the state, and provide for the showing of the films when taken, and the Department may join with other governmental departments of the state in publishing such informational publicity matter.

(b) The Highway Department may accept contributions for the above purposes from private sources, which funds may be deposited in a bank or banks to be used at the discretion of the Department in compliance with the wishes of the donor.

#### Duties of the Texas Industrial Commission

Sec. 4. For the purpose of satisfying provisions of existing statutes and the recently adopted amendment to Section 56 of Article XVI of the Constitution, the Texas Industrial Commission shall pursue a program in line with the following subsections:

(a) Investigate, study and undertake ways and means of promoting and encouraging the prosperous development and protection of the legitimate interest and welfare of Texas business, industry, agriculture, and commerce within and outside the state.

(b) Plan and develop an effective business information service both for the assistance of business and industry of the state and for the encouragement of business and industry outside the state to use economical facilities within the state.

(c) Compile, collect and develop periodicals or otherwise make available information relating to current business conditions.

(d) Conduct and encourage research designed to further new and more extensive uses of the natural and other resources of the state, and designed to develop new products and industrial processes.

(e) Encourage and develop commerce with other states and foreign countries.

(f) Cooperate with interstate commissions, engage in formulating and promoting the adoption of interstate compacts and agreements helpful to business, industry and commerce.



(g) Cooperate with other State Departments and with Boards, Commissions and other State Agencies in the preparation and coordination of plans and policies for the development of the state as such development may be appropriately directed or influenced by State Agencies.

(h) Promote and encourage the location and development of new business in the state as well as the maintenance and expansion of existing business.

(i) Advertise and disseminate information as to natural resources, desirable locations and other advantages for the purpose of attracting business to locate in this state.

(j) Aid the various communities in this state in getting business to locate therein.

(k) The Commission shall have the power to enter into contracts with a recognized and financially responsible advertising agency, having a minimum of five years of experience in handling accounts of similar scope; and for the contracting of time on broadcasting facilities, space in magazines, papers, and periodicals for the publication of such advertising information, historical facts, statistics and pictures as will be useful and informative to persons, and to corporations outside of the State of Texas, and shall have the power to enter into contracts with motion picture producers and others for the taking of moving pictures or still pictures in the state, and provide for the showing of the films when taken and the Commission may join with other governmental departments of the state in publishing such information or publicity matter. Acts 1959, 56th Leg., p. 431, ch. 193.

Effective 90 days after May 12, 1959, date of adjournment.

#### Art. 6145—1. Governor James Stephen Hogg Memorial Shrine

Construction and maintenance work within Governor James Stephen Hogg Memorial Park, see art. 6077h—3.

#### Art. 6145—2. Battleship "Texas" as a permanent memorial; Commission of Control; maintenance and operation

##### Compensation

Sec. 13. No member of the Commission or of the Operating Board shall receive any salary for the performance of his duties under this Act. No other person employed by virtue of the provisions of this Act shall receive, as salary, commission or compensation, out of the state funds herein appropriated, or from the fund which is to be maintained by the Commission, more than Seven Thousand, Two Hundred Dollars (\$7,200.00) per year. As amended Acts 1959, 56th Leg., p. 762, ch. 343, § 1.

Emergency. Effective May 30, 1959.

## TITLE 108—PENITENTIARIES

### 1. PRISON COMMISSION

#### Art. 6166c. Pay of members

Travel Regulations Act of 1959, see art. 6823a.

#### Art. 6166g. Control of prison system

Acts 1959, 56th Leg., p. 482, ch. 211, §§ 1, 2, authorized the Department of Corrections to purchase a tract of land containing 8,300 acres within a radius of 25 miles of the City of Huntsville.

## TITLE 109—PENSIONS

## 1. STATE AND COUNTY PENSIONS

Art.

6228e. Former Texas Rangers and their widows [New].

## 1. STATE AND COUNTY PENSIONS

Art. 6228a. Retirement system for State employees

## Management of Funds

## Sec. 7.

F. The assets and moneys of the Retirement System, from whatever source derived, shall be invested as a single fund, and all securities hereafter acquired, as well as those heretofore purchased, shall be held collectively for the proportionate benefit of all funds and accounts of the Retirement System. Added Acts 1959, 56th Leg., p. 518, ch. 229, § 1.

Emergency. Effective May 26, 1959.

Section 2 of the amendatory Act of 1959 contained a severability clause.

Art. 6228a—2. Teachers' Retirement System and State Employees Retirement System; prior service credits and certificates

## PART 1. CREDITABLE SERVICE

Members of teachers' retirement system; withdrawal or waiver; reinstatement; prior service certificate

1.01 Any person who is a member of the Teacher Retirement System of Texas, or who becomes a member and continues as a teacher or auxiliary employee for five consecutive years, under the provisions of Chapter 530, Acts of the Regular Session of the 54th Legislature, 1955, as amended,<sup>1</sup> may claim service prior to September 1, 1947 as a state employee as defined in the provisions of Chapter 402, Acts of the Regular Session of the 55th Legislature, 1957, as amended,<sup>2</sup> provided, however, that if any such person has withdrawn or withdraws their funds and/or has signed a waiver with the Employees Retirement System, such person may not claim prior service as provided herein, unless and until such person has deposited with the Teacher Retirement System all funds withdrawn, plus any penalties and fees required by the Teacher Retirement Act in like manner as if such service had been teaching or auxiliary service; provided, further, that if such member has signed a waiver, payment shall be made to the Teacher Retirement System as if such service had been teaching or auxiliary service waived in the Teacher Retirement System, and in addition thereto shall make any other deposits as may be required by the Teacher Retirement Act.

depositing the amount of funds withdrawn and/or the amount that given the privilege, by the terms of the Teacher Retirement Act, of

Notwithstanding any other provision of this Section, nothing herein shall authorize payment or repayment of such funds except during the time members of the Teacher Retirement System shall likewise be

would have been paid to the Teacher Retirement System had the member not signed a waiver.

Upon verification of such service claimed by the member of the Teacher Retirement System as a state employee, the Teacher Retirement System of Texas shall issue a Prior Service Certificate, to include such state employee service as prior service to the same extent and value as teaching and/or auxiliary employment as provided in the Teacher Retirement Act, as amended, and shall require deposits as contributions in such amounts as would have been required had such service been covered by the Teacher Retirement Act.

<sup>1</sup> Article 2922—1.

<sup>2</sup> Article 6228a.

**Members of employees retirement system; withdrawal or waiver;  
reinstatement; prior service certificate**

1.02 Any person who is a member of the Employees Retirement System of Texas, or who becomes a member and continues as an employee for five consecutive years, under the provisions of Chapter 402, Acts of the Regular Session of the 55th Legislature, 1957, as amended, may claim service prior to September 1, 1937, as a teacher, or September 1, 1949, as an auxiliary employee as defined under the provisions of Chapter 530, Acts of the Regular Session of the 54th Legislature, 1955, as amended, provided, however, that if any person has withdrawn or withdraws their funds and/or has signed a waiver with the Teacher Retirement System, such person may not claim prior service as provided herein, unless and until such person has deposited with the Employees Retirement System all funds withdrawn, plus any penalties and fees required by the Employees Retirement Act in like manner as if such service had been State Employee Service; provided, further, that if such member has signed a waiver, payment shall be made to the Employees Retirement System as if such service had been State Employee Service waived in the Employees Retirement System, and in addition thereto shall make any other deposits that may be required by the Employees Retirement Act.

Notwithstanding any other provisions of this Section, nothing herein shall authorize payment or repayment of such funds except during the time members of the Employees Retirement System shall likewise be given the privilege, by the terms of the Employees Retirement Act, of depositing the amount of funds withdrawn and/or the amount that would have been paid to the Employees Retirement System had the member not signed a waiver.

Upon verification of such service the Employees Retirement System of Texas shall issue a Prior Service Certificate, including such service as prior service with the Employees Retirement System to the same extent and value as provided in the Employees Retirement Act, as amended, for service as a teacher prior to September 1, 1937, or auxiliary employee service prior to September 1, 1947, and shall require and receive deposits as retirement contributions on such service after September 1, 1947, but prior to September 1, 1949, in such amounts as would have been required had such service been covered by the Employees Retirement Act.

**Reinstatement of account**

1.03 Any member of either system who has terminated an account, in either system, may revoke a waiver or reinstate such account by filing a request with the system in which membership service is being rendered;

subject, however, to the law governing the operation of the system in which the request is filed.

#### Credit for fiscal year

1.04 It is provided that no person may be granted more than one year of creditable service for one fiscal year beginning September 1, and ending August 31.

#### Membership in both retirement systems; cessation of contributions to one system

1.05 It is provided that any person who is a member of the Employees Retirement System, and also of the Teacher Retirement System, on the effective date of this Act, and who has been granted creditable service by each system, shall remain an active member of both systems and be required to pay a membership fee in both systems unless his account is withdrawn or transferred from one system to the other system.

It is further provided that in the event a member of both systems ceases to contribute to one system, while continuing to contribute to the other system, for a period of five consecutive years, the amount standing to the credit of said member plus an equal amount of state matching funds, and service accumulated in the system from which he has ceased to contribute may be transferred to the other system in which the member does and is contributing. It is provided herein that such service transferred from one system to the other shall be governed as set forth in subsections 1.01 and 1.02 of this Act.

It is provided that the account of the member transferred from any one system to the other will be cancelled by the system from which it is transferred and will be granted by the other system as if said service had not been heretofore granted, but shall be granted as set forth in this Act under subsections 1.01 and 1.02.

It is provided that prior service as set forth in subsections 1.01 and 1.02 shall apply after the effective date of this Act regardless if said service had heretofore been granted, and that membership service shall be transferred from one system to the other by cancelling the account of said member and transferring the amount standing to the credit of said member's account plus an equal amount of state matching funds.

#### Matching contributions

1.06 Each retirement system shall receive matching contributions, as provided under the respective Retirement Acts, for deposits of original contributions for service claimed or granted under the provisions of this Act.

## PART 2. SERVICE RETIREMENT

### Application for retirement

2.01 Any person who accumulated creditable service between both the Teacher Retirement System and the Employees Retirement System of Texas may retire by making written application to the Board of Trustees of the Retirement System in which the member had last rendered creditable service provided that such last service was five (5) consecutive years, and in the event that such last service was less than five

(5) consecutive years, then to the system in which most years of creditable service has been granted.

**Transfer of accumulated service and funds**

2.02 Upon application for retirement, the system responsible for the benefits to be paid will request the other retirement system to transfer all accumulated service and funds, including the amount standing to the credit of the member plus a like amount of state matching, unless transfer has previously been made, as set forth in subsection 1.05 of this Act. The service when transferred shall be additive to the accumulated service granted by the system responsible for the payment of benefits.

**Law governing restrictions, requirements and benefits**

2.03 The law regarding service retirement in the system from which the member will retire will govern the restrictions, requirements and benefits to be paid for the total service.

**Joint retirement benefits of persons previously retired**

2.04 It is expressly provided that this Act shall not affect the joint retirement benefit of any person who retired on or before August 31, 1959.

**PART 3. DISABILITY RETIREMENT**

**Application for retirement**

3.01 Any person who has accumulated sufficient creditable service between the Teacher Retirement and the Employees Retirement Systems of Texas may apply for disability retirement by filing an application with the Board of Trustees of the retirement system in which the member last rendered covered service.

**Transfer of accumulated service and funds**

3.02 Upon application for retirement, the system responsible for the benefits to be paid will request the other retirement system to transfer all accumulated service and funds, including the amount standing to the credit of the member plus a like amount of state matching, unless transfer has previously been made, as set forth in subsection 1.05 of this Act. The service when transferred shall be additive to the accumulated service granted by the system responsible for the payment of benefits.

**Law governing restrictions, requirements and benefits**

3.03 The law regarding disability retirement in the system from which the member will retire will govern the restrictions, requirements and benefits to be paid for the total service.

**Joint retirement benefits of persons previously retired**

3.04 It is expressly provided that this Act shall not affect the joint retirement benefit of any person who retired on or before August 31, 1959.

#### PART 4. DEATH BENEFITS

##### Payment of death or survivor benefits

4.01 It is provided herein that in the event of death of a member having service with the Teacher Retirement System and Employees Retirement System, that the Retirement System in which the member last rendered covered service will pay death and/or survivor benefits in the amount and manner provided in the law governing said system.

##### Transfer of accumulated service and funds

4.02 The system responsible for the benefits to be paid will request the other retirement system to transfer all accumulated service and funds, including the amount standing to the credit of the member plus a like amount of state matching, unless transfer has previously been made, as set forth in subsection 1.05 of this Act. The service when transferred shall be additive to the accumulated service granted by the system responsible for the payment of benefits

#### PART 5. ADMINISTRATION

##### Intention of legislature; reciprocal service

5.01 It is the legislative intent of this Act to provide for reciprocal service as set forth in Section 63 of Article XVI of the Constitution of Texas, and that qualified members of the Teacher Retirement System, in addition to the benefits allowed them under the Teacher Retirement System shall be entitled to credit in the Teacher Retirement System for all services, including prior service and membership service, earned or rendered by them as an appointive officer or employee of the state. Likewise, qualified members of the Employees Retirement System of Texas, in addition to the benefits allowed them under the Employees Retirement System of Texas shall be entitled to credit in the Employees Retirement System of Texas for all service, including prior service and membership service, earned or rendered by them as a teacher or person employed in the public schools, colleges, and universities supported wholly or partly by the state.

##### Rules and regulations; transfer of service and funds between systems

5.02 It is expressly provided herein that the Board of Trustees of the Teacher Retirement System of Texas and the Board of Trustees of the Employees Retirement System of Texas shall adopt, in separate or joint session, identical rules and regulations as may be required to place this Act into effect and to provide for the transfer of service and funds between the systems, and the State Comptroller shall transfer such funds in such amounts as are certified by the system from which said funds are to be transferred.

##### Re-employment of retired persons

5.03 Employment of any person retired under the provisions of this Act in a position covered by either the Teacher Retirement System or

the Employees Retirement System shall be subject to the provisions of the law governing re-employment in a position covered by the system under which the member retired. As amended Acts 1955, 54th Leg., p. 356, ch. 75; Acts 1959, 56th Leg., p. 519, ch. 230, § 1.

Emergency. Effective Sept. 1, 1959.

Section 2 of the amendatory Acts of 1959, 56th Leg., p. 519, ch. 230 provided:

"If any Section or part of any Section of this Act is declared to be unconstitutional, the remainder of the Act shall not thereby be invalidated. All laws or parts of laws or rules and regulations in conflict here-

with are amended insofar as conflict exists with the provisions of this Act; and provided further, that this Act shall be cumulative to the provisions of Chapter 530, Acts of the Regular Session of the 54th Legislature, 1955, as amended, and Chapter 402, Acts of the Regular Session of the 55th Legislature, 1957, as amended."

### **Art. 6228e. Former Texas Rangers and their widows**

Section 1. (a) Pensions to Former Texas Rangers. A pension of Eighty Dollars (\$80.00) per month shall be paid to each former Texas Ranger who meets the following conditions:

(1) He served as a regular Texas Ranger, receiving compensation from the state, for an aggregate time of at least two (2) years prior to September 1, 1947. Service as a special Texas Ranger, although compensated from state funds, shall not be counted;

(2) He has not been eligible at any time for membership in the Employees Retirement System of Texas;

(3) He was not dismissed from service as a Texas Ranger for incompetence, misconduct, or breach of duty;

(4) He has reached the age of sixty (60) years.

(b) Pensions to Widows of Former Texas Rangers. A pension of Eighty Dollars (\$80.00) per month shall also be paid to the widow of each former Texas Ranger who meets the following conditions:

(1) The widow was legally married to a Texas Ranger or former Texas Ranger prior to January 1, 1957, and at the time of his death;

(2) Her husband met the conditions set out in paragraphs (1), (2), and (3) of subsection (a) of this Section.

Sec. 2. The pensions provided for in this Act shall be paid from the Confederate Pension Fund created by Section 17, Article VII of the Constitution of Texas, upon warrants of the Comptroller of Public Accounts. Persons entitled to pensions under this Act shall make application to the Comptroller of Public Accounts. Said application shall recite facts showing that the applicant meets the qualifications set out in Sections 1(a) or 1(b) of this Act depending upon the status of the applicant, shall be accompanied by a certificate executed by the custodian of the service record of the applicant, or of the applicant's deceased husband as the case may be, showing the applicant's qualifications under paragraphs (1) and (3) of Subsection (a) of Section 1 of this Act, and shall be sworn to by the applicant. Full monthly payment shall be made for each month commencing with the month in which the completed application is filed and ending with the month in which the recipient dies.

Sec. 3. There is hereby appropriated to the Comptroller of Public Accounts, out of the Confederate Pension Fund, whatever amount is necessary to pay the pensions authorized by this Act during the period between the effective date of this Act and August 31, 1959.

There is further appropriated to the Comptroller of Public Accounts, out of the Confederate Pension Fund, whatever amount is necessary to pay the pensions authorized by this Act during the biennium beginning

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

September 1, 1959, and ending August 31, 1961. Acts 1959, 56th Leg., p. 629, ch. 283.

Effective 90 days after May 12, 1959, date of adjournment.

Subject to the provisions of section 49A, Article III of the Constitution of the State of Texas.

Section 4 of the Act of 1959 contained a severability clause.

Confederate pension fund, see art. 6204.

Retirement and disability pension system for Texas Rangers, see Const. art. 16, § 66.

Retirement system for state employees, see art 6228a.

Texas Rangers, see art. 4413(11).

**Title of Act:**

An Act providing for payment of pensions to former Texas Rangers and their widows under certain conditions, pursuant to Article XVI, Section 66 of the Constitution of Texas; providing conditions of eligibility and procedures for payment; making an appropriation for such payments; providing for severability; and declaring an emergency. Acts 1959, 56th Leg., p. 629, ch. 283.

## 2. CITY PENSIONS

**Art. 6243b. Firemen and policemen pension fund in cities of over 100,000**

**Operation of fund notwithstanding census change**

Sec. 18. Any city which has established a firemen and policemen pension fund in accordance with the provisions of this Act may continue to operate such fund notwithstanding the fact that any future federal census may result in the city being above or below the population bracket as specified in this Act. Added Acts 1959, 56th Leg., p. 26, ch. 16, § 1.

Effective 90 days after May 12, 1959, date of adjournment.

**Art. 6243e. Firemen's Relief Pension Fund**

**Contributions by member of fully paid fire department**

Sec. 10C. Each fireman who is a member of a fully paid fire department which has a Firemen's Relief and Retirement Fund, and who was participating in the Firemen's Relief and Retirement Fund of his city or town on July 22, 1957, shall be required to make the contributions to such Fund provided by this Act, and each such fireman shall be entitled to participate in the benefits provided by this Act. Added Acts 1959, 56th Leg., p. 810, ch. 367, § 1.

Emergency. Effective June 1, 1959.

**Art. 6243f. Firemen and policemen's pension fund in cities of 350,000 to 430,000 inhabitants**

**Board of Trustees**

Section 1. In all incorporated cities containing more than three hundred, fifty thousand (350,000) inhabitants and less than four hundred, thirty thousand (430,000) inhabitants according to the last preceding Federal Census or any future Federal Census, and having a fully paid Fire and Police Department, there is created hereby a Firemen and Policemen's Pension Fund; provided, however, that once such pension system becomes operative in any city, any right or privilege accruing to any member thereunder shall be a vested right and the same shall not be denied or abridged thereafter through any change in population of any such city taking such city out of the population (as herein prescribed) and said pen-



sion system shall continue to operate and function regardless of whether or not any future population exceeds or falls below said population. To govern said Firemen and Policemen's Pension Fund, there is hereby created a Board of Trustees to consist of seven (7) members, as follows: the mayor, two (2) aldermen, councilmen or commissioners, each to serve on this Board for the term of office to which they are elected, and to be elected to this Board by majority vote of the Board of Aldermen, Council, or Board of Commissioners on which they serve; two active firemen below the rank of Fire Chief, to be selected by the majority vote of the members of the fire department by secret ballot, one for a term of two (2) years, and the other for a term of four (4) years, and two (2) active policemen below the grade of Police Chief, to be selected by the majority vote of the members of the police department, by secret ballot, one (1) for a term of two (2) years, and the other for a term of four (4) years. All members from the fire and police departments shall be elected by the contributors to the Fund, and shall serve until their successors are elected and qualified, and their successors shall be elected to serve for a term of four (4) years. These seven (7) trustees and their successors shall constitute the Board of Trustees of the Firemen and Policemen's Pension Fund, to provide for the disbursement of same, and to designate the beneficiaries thereof, and to have complete and independent control over said Pension Fund. Said Board shall be known as the Firemen and Policemen's Pension Fund Board of Trustees of \_\_\_\_\_, Texas. As amended Acts 1951, 52nd Leg., p. 86, ch. 56, § 1; Acts 1959, 56th Leg., p. 795, ch. 363, § 1.

Emergency. Effective June 1, 1959.

#### Powers and Duties of Board

Sec. 2. The board shall organize by choosing one (1) member as chairman and one (1) member as secretary, which board shall control and administer the fund and shall order payments therefrom in pursuance of the provisions of this Act. It shall report annually to the governing body of such city, the condition of the Fund and the receipts and disbursements on account of same, with a complete list of the beneficiaries of the Fund, and the amounts paid them. The Board shall have the complete authority and power to administer all of the provisions of this Act and any implied powers under this Act. As amended Acts 1959, 56th Leg., p. 795, ch. 363, § 2.

Emergency. Effective June 1, 1959.

#### Membership

Sec. 3. Repealed. Acts 1959, 56th Leg., p. 795, ch. 363, § 3. Eff. June, 1, 1959.

#### Contributions to Fund, Deductions from Wages

Sec. 4. There shall be deducted for such Fund from the wages of each fireman and policeman in the employment of such city a sum equal to five percent (5%) of the base pay of a private. Such city shall pay into said Fund, and at the same time, a matching amount equal to the sum total of all of such deductions. Provided, however, the board of trustees can raise the amount of deductions not to exceed seven and one-half percent (7½%) of the base pay of a private member of either of said departments, the additional contribution of the city to be likewise increased at the same time to the same amount. Any donations made to said Fund and all funds received from any source for such Fund shall be deposited in like manner in such Fund. The city's matching amount referred to above

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

shall be in addition to the net revenues from the parking meter monies referred to in Section 16 of this Act to the extent such revenue shall equal in amount the amount of the net revenues therefrom for the calendar year 1958, but such city shall receive credit on such matching amount for each calendar year to the extent such net proceeds should exceed in amount the amount of the net proceeds from such meters for the calendar year 1958, if it should exceed such amount in any such calendar year. In the event such parking meter revenues for any calendar year is less than the 1958 amount of such parking meter revenues, it is expressly understood that such sum of revenues shall accrue to the Fund in addition to the matching amount contributed by the city mentioned in this Act. To the full extent necessary, such matching amount shall be paid out of the General Fund, and such city shall make provision therefor. As amended Acts 1959, 56th Leg., p. 795, ch. 363, § 4.

Emergency. Effective June 1, 1959.

#### Meetings; Disbursements; Records

Sec. 5. The Board shall hold regular monthly meetings and other meetings upon call of its Chairman, or written demand of a majority of the members. It shall issue orders signed by the Chairman and Secretary to the persons entitled thereto of the amounts of money ordered paid to such persons from such Fund by the said Board, which order shall state for what purposes such payments are to be made. It shall keep a record of the proceedings which record shall be of public record; it shall at each monthly meeting send to the City Treasurer a written list of persons entitled to the payment from the Fund, stating the amount of such payment and for what granted, which list shall be certified and signed by the Chairman and Secretary of such Board attested under oath. The Treasurer shall enter a copy of said list upon the book to be kept for that purpose, which book shall be known as the Record of the Firemen and Policemen's Pension Fund, and the said Board shall direct payment of the amounts herein to the persons entitled thereto out of said Fund. No money of said Fund shall be disbursed for any purpose without a majority vote of the Board, which shall be a "No" and "Yes" vote entered upon the proceedings of the Board. As amended Acts 1959, 56th Leg., p. 795, ch. 363, § 5.

Emergency. Effective June 1, 1959.

#### Who May Share in Fund

Sec. 7(a). Any person who has been duly appointed and enrolled in the Fire Department or Police Department of any city having the number of inhabitants provided for in Section 1, as amended, to a position or office expressly established and classified as a position or office in either of said departments by Ordinance of the City Council or other governing body of such city, and who, after such due appointment and enrollment has served the probationary period in such position or office, if any, shall automatically become a member of the Pension Fund of such city upon expiration of ninety (90) days from date such city comes within the provisions of this Act, provided such person at the time of such appointment was not less than eighteen (18) years of age and not more than thirty-five (35) years of age. In all instances where a person is already a member of and contributor to such Pension Fund, he shall retain and be entitled to all rights and privileges due him by virtue of having been such a member and contributor.

Sec. 7(b). Any person not a member of the Pension Fund when this Act becomes effective, who thereafter is duly appointed and enrolled as a Fireman or Policeman of such city in a position or office expressly estab-

lished and classified as a position or office in either of said departments by ordinance of the city council or other governing body of such city, and who, after such due appointment and enrollment serves the probationary period in such position or office, if any, shall automatically, after six (6) months of service, become a member of the Pension System as a condition of his employment, provided such person at the time of such appointment was not less than eighteen (18) years of age and not more than thirty-five (35) years of age.

Sec. 7(c). Members of this Pension Fund who are called to active military service shall not be required to make the monthly payments into the Fund provided for in this Act as long as they are thus engaged in active military service, nor shall they lose any seniority rights or retirement benefits provided for in the Act by virtue of such military service, provided that after their reinstatement to an active status in either the Fire or Police Department they must file a written statement of intent with the Secretary of the Pension Board within ninety (90) days of their return to such active status to pay into the Pension Fund an amount equal to what they would have paid in if they had remained on active status in the Department during the period of their absence in military service and make such payment in full within an amount of time after their return equal to the time they were absent, in each case, or forever lose all credit toward a retirement pension for the length of time such member was engaged in active military service. No disability resulting from either injury or disease contracted after the effective date of this Act while engaged in military service shall ever entitle a member of the Fund to a disability pension.

Sec. 7(d). For the purposes of this Act, the regularity of an appointment shall not be presumed from the serving of the full probationary period, if any. And the service by an officer or employee of the probationary period in the Fire Department or Police Department shall not constitute the creation of a position or office to which a regular or a due appointment may be made under this Act. And the drawing of compensation by an officer or employee in the Fire Department or Police Department for his service therein shall not of itself make such a person a member of said Pension Fund. As amended Acts 1951, 52nd Leg., p. 56, ch. 86, § 2; Acts 1957, 55th Leg., p. 14, ch. 11, § 1; Acts 1959, 56th Leg., p. 795, ch. 363, § 6.

Emergency. Effective June 1, 1959.

#### Retirement Pension

Sec. 8(a). Whenever any member of said Departments shall have contributed a portion of his salary as provided by this Act, and shall have both contributed and served for a period of twenty (20) years, twenty-five (25) years, or thirty (30) years in either of said Departments, the Board shall, upon the application of any such member for retirement and a retirement pension, authorize a retirement pension to said applicant upon twenty (20) years of service to two-fifths ( $\frac{2}{5}$ ths) of the base pay of a private as of the time of any such application; upon twenty-five (25) years service to one-half ( $\frac{1}{2}$ ) of the base pay of a private as of the time of any such application; and upon thirty (30) years of service to three-fifths ( $\frac{3}{5}$ ths) of the base pay of a private as of the time of any such application. No member shall ever receive any award from this Fund for retirement until he has served at least twenty (20) years in either or all of the Departments and has also contributed the required amount of money for at least twenty (20) years. In determining the number of years service in a department, the member shall be given full credit for such

time, or periods of time, said member was actively engaged in the military service, but only strictly in accordance with the provisions of Section 7(c) of this Act.

Sec. 8(b). From and after January 1, 1959, whenever any member of said Departments shall have served for a period of thirty (30) years in either of said Departments and shall have contributed a portion of his salary, as provided by this Act, for the same period of time, he shall be retired automatically from service upon attaining the age of sixty-five (65) years; failure of such employee to comply with this provision shall deprive the member, and his widow and children and dependent parents, of any and all pensions and benefits herein provided.

Provided, however, when a member in said departments attains the age of sixty-five (65) years without having served for a period of thirty (30) years in either of said Departments and without having contributed a portion of his salary as provided by this Act for a period of thirty (30) years, he may continue his service until his period of service and period of Pension Fund contributions shall cover thirty (30) years. As amended Acts 1951, 52nd Leg., p. 86, ch. 56, § 3; Acts 1957, 55th Leg., p. 14, ch. 11, § 2; Acts 1959, 56th Leg., p. 795, ch. 363, § 7.

Emergency. Effective June 1, 1959.

#### Certificate of retirement

Sec. 9. Repealed. Acts 1959, 56th Leg., p. 795, ch. 363, § 8. Eff. June 1, 1959.

#### Retirement When Disabled

Sec. 10. When any duly appointed and enrolled member of the Fire Department or Police Department of the city who is contributing to said Fund, as herein provided, shall become so permanently disabled through injury or disease so as to incapacitate him from the performance of his duties, and shall make written application subject to medical examination for such injury or disease, he shall be retired from the service and be entitled to receive from the said Fund one-half ( $\frac{1}{2}$ ) of the base pay of a private per month based on the current pay schedule. In no case shall a disability claim for incapacity from fire or police duties be received or considered, nor an award made hereunder until disability therefrom has first been proved to be continuous and wholly incapacitating for a period of not less than ninety (90) days. The amount of one-half ( $\frac{1}{2}$ ) of the base pay of a private is the maximum amount of disability pension for total and permanent disability. Disability resulting from injury or disease incurred after the effective date of this Act while engaged in the active military service shall not entitle a member of this Fund to a disability pension. As amended Acts 1951, 52nd Leg., p. 86, ch. 56, § 4; Acts 1959, 56th Leg., p. 795, ch. 363, § 9.

Emergency. Effective June 1, 1959.

#### Death Benefits to Widows and Children

Sec. 11. In case of the death before or after retirement of any member of the Fire and Police Pension Fund of such city, who at the time of his death or retirement was a contributor to the said Fund, and a member in good standing of said Fund, leaving a widow, child or children under the age of seventeen (17) years, the widow and such child or children shall be entitled to receive from the said Fund an amount not to exceed one-half ( $\frac{1}{2}$ ) of the current base pay of a private per month; one-half ( $\frac{1}{2}$ ) of the widow's amount in the aggregate shall go to the children under seventeen

(17) years of age, and one-half ( $\frac{1}{2}$ ) for the widow. No child resulting from any marriage subsequent to the date of the retirement of said member shall be entitled to a pension under this Act. In case there are no children, the widow shall receive an amount not to exceed one-half ( $\frac{1}{2}$ ) of the current base pay of a private per month. In case there is no widow, the children shall receive one-fourth ( $\frac{1}{4}$ ) of the current base pay of a private per month. The amount awarded hereunder to any child or children shall be paid by the Board of Trustees to the legal guardian of said child or children. In no instance shall the amount received by the widow, child or children exceed a pension allowance of one-half ( $\frac{1}{2}$ ) of the current base pay of a private per month, and in the event of the death of a member who retired upon twenty (20) years service and less than twenty-five (25) years service in no instance shall the amount received by the widow and child or children or the widow alone, exceed a total of two-fifths ( $\frac{2}{5}$ ) of the current base pay of a private per month. A child or children alone in such case shall receive only one-fifth ( $\frac{1}{5}$ ) of the current base pay of a private. A child who is so mentally or physically retarded as to be incapable of its own support to any extent shall, if otherwise qualified, enjoy the rights of children under seventeen (17) years of age regardless of age. Provided, further, that any pension paid hereunder to any mentally or physically retarded child or children shall be reduced to the extent that any of same shall receive any state pension or aid. On the remarriage of the widow, either statutory or common law, or the marriage of any child granted such pension, the pension shall cease. No widow resulting from any marriage subsequent to the date of the retirement of said member shall be entitled to a pension under this Act. As amended Acts 1951, 52nd Leg., p. 86, ch. 56, § 5; Acts 1959, 56th Leg., p. 795, ch. 363, § 10.

Emergency. Effective June 1, 1959.

**Death benefits to children under 17; remarriage of widow;  
marriage after retirement**

Sec. 12. Repealed. Acts 1959, 56th Leg. p. 795, ch. 363, § 11. Eff. June 1, 1959

**Death Benefits to Dependent Father and/or Mother; Investigations**

Sec. 13. If any member of the Fire or Police Department dies before or after retirement, who was a contributor to said Fund and a member in good standing thereof, and leaves no widow or child, but leaves surviving him a father and/or mother wholly dependent upon him for support, such dependent father and/or mother shall be entitled to receive one-third ( $\frac{1}{3}$ rd) of the base pay of a private per month, to be equally divided between said father and mother, so long as they are wholly dependent. When there is only one (1) dependent, either father or mother, the Board shall grant the surviving dependent one-fourth ( $\frac{1}{4}$ th) of the current base pay of a private per month. The Board shall have the authority to make a thorough investigation, determine the facts as to the dependency of the said parties, and each of them, as to how long the same exists and may at any time, upon the request of any beneficiary or any contributor to such Fund, re-open any award made to any of said parties and discontinue such pension as to all or any of them as it may deem proper and the findings of any Board in regard to any matters, as well as to all pensions granted under this Act, shall be final upon all parties seeking a pension until such award of the Trustees shall have been set aside or revoked by a court of competent jurisdiction. The Board shall have the power to make any such investigation into any pension application whatsoever or any pensioner's

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

status on its own initiative. If any member of the Fire and Police Department in active service should die, leaving neither a widow, a child or children, under seventeen (17) years of age, or a retarded child, or dependent father and mother, or one such, the estate of said deceased member of the Fire or Police Department shall be entitled to a burial death benefit payment in the amount of Five Hundred Dollars (\$500.00) from said Fund. This benefit shall never be paid if the member of the Fund dying is survived by one or more beneficiaries as defined hereunder. As amended Acts 1959, 56th Leg., p. 795, ch. 363, § 12.

Emergency. Effective June 1, 1959.

#### Applications; Hearing

Sec. 14. The Board shall consider all cases for membership in the Fund and retirement and pensioning of the members of the Fire and Police Departments rendered necessary or expedient under the provisions of this Act, and all applications of pensions by widows, the children and dependent parents, and the said Trustees shall give notice to persons asking for membership in said Fund or for a pension to appear before the Board and offer such sworn evidence as he, or they, may desire. Any person who is a member of said Departments and who is a contributor of the said Fund, and a member thereof in good standing, may appear either in person, or by attorney, and contest the application for membership participation in said Fund or for a pension or benefits by any person claiming to be entitled to participate therein, either as a member or beneficiary, and may offer testimony in support of such contest. The Chairman of said Board shall have the authority to issue process for witnesses and administer oaths to said witnesses and to examine any witnesses in any manner affecting retirement or a pension under the provisions of this Act. Such process for witnesses shall be served upon any member of the Fire or Police Departments and upon the failure of any witness to attend and testify, he or she may be compelled to attend and testify as in any judicial proceedings; according to practice in a Justice Court. As amended Acts 1959, 56th Leg., p. 795, ch. 363, § 14.

Emergency. Effective June 1, 1959.

#### Medical Examination; Prior Service Credit

Sec. 15. (a) Said Board may cause any person receiving any disability pension under the provisions of this Act, to appear and undergo medical examination or medical examinations by any reputable physician or physicians selected by the Board, as a result of which the Board shall determine whether the relief in said case shall be continued, increased, decreased, or discontinued; provided, however, that such relief shall never be discontinued unless the person receiving any pension shall have first been accepted for reinstatement in his former position or status in the Fire Department or Police Department, as the case may be, by the Chief of the Department; provided further, that no award shall ever exceed one-half ( $\frac{1}{2}$ ) of the base pay of a private based on the current rate of pay at the time of the original granting of any pension except as provided in Section 24 of this Act. The Board may change any percentage stipulated in this Act, commensurate with any change in the degree of disability; provided, however, that such percentage shall not, except in the case of discontinuance, be reduced to less than one twenty-fifth ( $\frac{1}{25}$ ) of the base pay of a private per month for each year he shall have served and contributed a portion of his salary as provided by this Act, based on the current rate of pay at the time of the original granting of any pension, or on a minimum base pay of Two Hundred Dollars (\$200.00) per month, whichever is

greater. If any person receiving benefits under any provision of this Act, after due notice, fails to appear and undergo any such examination or examinations as ordered by the Board, the Board may reduce or entirely discontinue such benefits.

(b) Any member of the Fund may establish prior service credit by so expressing his intention in writing within ninety (90) days from the effective date of this Act and by thereafter paying into the Pension Fund, within six (6) months, a sum of money equal to the amount of salary deductions he would have paid had he been a member of the Fund for the year or years for which he desires to establish such prior service credit, but in no event, to exceed the total number of years served in the Fire Department and/or the Police Department, as the case may be; provided that each person who is receiving a disability pension under this Act, at the effective date hereof, will be deemed to have established prior service credit for each year served in the Fire Department or Police Department at the time of his retirement, whether he has been a contributor to the Fund for the full period of service or not.

(c) Written notice by registered letter shall be given each and every person eligible to establish such prior service credit by such city within sixty (60) days from the date such city comes under this Act, informing him of the provisions hereof. As amended Acts 1959, 56th Leg., p. 795, ch. 363, § 14.

Emergency. Effective June 1, 1959.

#### Reserve Retirement Fund

Sec. 17. At the end of the fiscal year all money paid into the Fund that remains as a surplus over and above the orders for payments as issued by the Board, shall be paid into the Reserve Retirement Fund to accumulate at interest for the benefit of the Reserve Funds needs. All such Funds as may accumulate in this Special Retirement Reserve shall be invested at regular intervals or at such times as the accumulations justify. The Funds may be invested in the following manner:

1. A sum not to exceed ten percent (10%) may be deposited with a Federal Credit Union restricted to employees of the city.

2. A sum not to exceed fifteen percent (15%) may be invested in saving and loan associations which are insured by the Federal Saving & Loan Insurance Corporation, but the amount invested in any one association shall not exceed Ten Thousand Dollars (\$10,000.00).

3. A sum not to exceed twenty percent (20%) may be invested in shares of capital stock of national banks having been established at least ten (10) years and having a capitalization of at least Five Million Dollars (\$5,000,000.00), and/or in shares of capital stock of life insurance companies, and/or fire and casualty insurance companies having been established at least twenty-five (25) years and having a capitalization of at least Five Million Dollars (\$5,000,000.00).

4. A sum not to exceed fifty percent (50%) may be invested in shares of open end investment companies, closed end investment companies, common or preferred stocks, or in debentures or mortgages.

5. The entire Fund or any portion thereof, may be invested in United States Treasury Notes, United States Treasury Bonds, Bonds of the State of Texas, or bonds of any county or municipality of the State of Texas. The Board shall have the power to make these investments for the sole benefit of this Reserve Retirement Fund. The investment shall remain in the custody of the Treasurer in the same manner as provided for the custody of the Funds. The Board shall have the power and

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

authority, by a majority vote of its members, to disburse the moneys accumulated as the retirement needs arise. As amended Acts 1955, 54th Leg., p. 673, ch. 242, § 1; Acts 1959, 56th Leg., p. 795, ch. 363, § 15.

Emergency. Effective June 1, 1959.

#### Act as of Essence of Employment Contract

Sec. 19. This Act shall be of the essence of the Contract of Employment and appointment of the Firemen and Policemen by cities of this class; and, the deferred payment is a part of the compensation for services rendered to the city. However, no member of either of said Departments or of said Fund shall ever be entitled to any refund from said Fund on account of the money deducted from that amount of their pay equal to the base pay of a private, which money is in itself declared to be public money, and the property of said Fund for the benefit of the members qualifying for benefits, and their beneficiaries. As amended Acts 1959, 56th Leg., p. 795, ch. 363, § 16.

Emergency. Effective June 1, 1959.

#### Accounts

Sec. 23. The accounts of the Firemen and Policemen's Pension Fund and of firemen and policemen shall be kept separately, and if any of these classes of employees are included in any statute of the State of Texas creating a pension system, then the Board created herein shall stand in the place of any similar Board created by such statute and shall receive the apportionment due the class of employees mentioned, and shall pay the money allocated, under the terms of this Act to such class, but the other classes specified herein shall not participate in any such funds. As amended Acts 1959, 56th Leg., p. 795, ch. 363, § 17.

Emergency. Effective June 1, 1959.

#### Increase in pensions

Sec. 24. Because of the inflationary increase in the cost of living all pensions originally granted for retirement, death, or disability occurring prior to April 16, 1951, to Firemen, Policemen, and Fire Alarm Operators, or their widows or wholly dependent parents, and which pensions are less than One Hundred Dollars (\$100.00) per month, are hereby increased up to the total sum of One Hundred Dollars (\$100.00) per month in each such case beginning with the first whole month after the effective date hereof, subject to the right of the Board to change any percentage of disability, as provided by Section 15 of this Act. Added Acts 1959, 56th Leg., p. 795, ch. 363, § 17a.

Emergency. Effective June 1, 1959.

Section 18 of the amendatory Act of 1959 should not affect the validity of the remaining parts of this Act.

### Art. 6243g. Pension system in cities over 500,000

#### Persons eligible under this act

##### Sec. 3.

(c). Repealed. Acts 1959, 56th Leg., p. 1099, ch. 501, § 2. Eff. June 1, 1959

Prior to repeal, subsection c was amended by Acts 1957, 55th Leg., p. 1194, ch. 398, § 1.



**Persons not eligible under this act****Sec. 4.**

(f) All elected officers of the city unless such elected officers shall, prior to his election, have been an employee of such city and a member of its Pension System, subject to a physical examination, and repayment of separation allowance with interest and provided he makes such election within ninety (90) days from the effective date of this amendatory Act. Any former employee and former member of the Pension System who shall hereafter be elected to an office of said city shall, in like manner, be entitled to reinstatement provided he elects to do so within ninety (90) days from the date he takes office. Any officer coming under the terms hereof who, thereafter, fails of election to said office or another elective office, shall be considered as separated from the service unless he is again employed by such city within five (5) years from the expiration of his term of office. Acts 1959, 56th Leg., p. 1099, ch. 501, § 1(A).

Emergency. Effective June 1, 1959.

**Pension board**

**Sec. 5.** (a) There is hereby created a Pension Board of the Pension System, in which Board there is hereby vested the general administration, management and responsibility for the proper and effective operation of the Pension System. The Board shall be organized immediately after its members have qualified and taken the oath of office and shall serve without compensation.

(b) The Pension Board shall be composed of seven (7) members as follows:

(1) The Mayor of the City, or City Manager, if there be one, or the Director of the Civil Service Commission as his representative.

(2) The Treasurer of the City or person performing the duties of Treasurer.

(3) Three (3) employees of the city having membership in the Pension System and elected by the members of such System. No city department shall have more than one (1) representative. The persons now serving as employee members of the Board shall continue in office until the expiration of their terms, in cities having established systems under the original Act.

The term of office of succeeding members so elected shall likewise be two (2) years and each such member shall continue to serve until his successor is duly elected and qualified. Vacancies occurring by death, resignation or removal of such representative shall be filled by members elected by the members of the Pension System. The first election of employee members in cities hereafter coming under this Act shall be held in such city at such time and place as shall be fixed by the governing body of the city, and to be not more than seventy-five (75) days from the date such city comes under the terms of this Act.

(4) Two (2) legally qualified taxpayers of such city, residents of Harris County, Texas, for the preceding three (3) years, to be chosen by the governing body of the city, being neither employees nor officers of such city. The two (2) members so chosen by the governing body of the city shall serve for two (2) years and until their successors are duly elected and qualified. Vacancies occurring by death, resignation, or removal of such representative shall be filled by the governing body of the city. Public members now on the Boards of cities having established Systems shall continue in office until the expiration of their terms. As amended Acts 1959, 56th Leg., p. 1099, ch. 501, § 1(B).

Emergency. Effective June 1, 1959.

**Surplus: investment**

Sec. 10. Whenever, in the opinion of the said Pension Board, there is on hand in said Pension Fund a surplus over and above a reasonably safe amount to take care of current demands upon such Funds, such surplus, or so much thereof as in the judgment of the said Pension Board is deemed proper, may be invested in bonds or other interest bearing obligations and securities of the United States, the State of Texas, or any county, city or other political subdivision of the State of Texas, or in first lien real estate mortgage securities insured by the Federal Housing Administration under the National Housing Act of the United States, as amended from time to time and in such corporation bonds, preferred stocks and common stocks as the Pension Board may deem to be proper investments for said Funds. In making each and all of such investments said Pension Board shall exercise the judgment and care under the circumstances then prevailing which men of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income therefrom as well as the probable safety of their capital; provided, however, that not more than fifty per cent (50%) of said Funds shall be invested at any given time in corporate stocks and bonds, nor shall more than one per cent (1%) of said Funds be invested in securities issued by any one (1) corporation, nor shall more than five per cent (5%) of the voting stock of any one (1) corporation be owned; and provided, further, that stocks eligible for purchase shall be restricted to stocks of companies incorporated within the United States which have paid dividends for ten (10) consecutive years or longer immediately prior to the date of purchase and which, except for bank stocks and insurance stocks, are listed upon an exchange registered with the Securities and Exchange Commission or its successors. As amended Acts 1959, 56th Leg., p. 1099, ch. 501, § 1(C).

Emergency. Effective June 1, 1959.

**Retirement on pension**

Sec. 12. (a) Any member of such Pension System who has been in the service of the city for the period of twenty-five (25) years and has attained fifty-five (55) years of age shall be entitled to a Retirement Pension of One Hundred and Twenty-five Dollars (\$125) per month for the rest of his life, upon his retirement from the service of said city. Upon the completion of said twenty-five (25) years of service and attaining fifty-five (55) years of age, such Pension Board shall issue to said member a certificate showing that he is entitled to said Retirement Pension and thereafter when such member retires, whether such retirement be voluntary or involuntary, such monthly payment shall begin forthwith and continue for the remainder of said member's life. Upon the date of any member's retirement, if he shall have served in excess of twenty-five (25) years, he shall, in addition to the said sum of One Hundred and Twenty-five Dollars (\$125) receive an additional sum of Four Dollars (\$4) per month for each additional year served in excess of twenty-five (25) years. If any member of such System is retired for any reason prior to completing twenty-five (25) years service, and such member has completed at least ten (10) years service, and attained the age of sixty (60) years, he shall receive a monthly pension of less than One Hundred and Twenty-five Dollars (\$125) calculated on the pro rata basis that his total service bears to the full term of twenty-five (25) years. Provided, that where any member of any such System has completed ten (10) years service

with such city and shall thereafter attain sixty (60) years of age, he may, at his option, be retired and upon retirement shall receive a monthly Pension which shall be calculated on the pro rata basis that his term of service upon reaching sixty (60) years of age bears to the full term of twenty-five (25) years.

(b) It shall be compulsory for any member to retire from service upon attaining seventy (70) years of age. Provided, Section 12(b) shall not become effective until two (2) years after the passage of this amendatory Act. As amended Acts 1959, 56th Leg., p. 1099, ch. 501, § 1(D).

Emergency. Effective June 1, 1959.

#### Disability pensions

Sec. 13. If any member has completed ten (10) years, but less than twenty-five (25) years service with the city, and shall thereafter become totally and permanently disabled for any reason whatsoever, he shall be retired on a monthly pension which shall be calculated on the pro rata basis that his term of service bears to the full term of twenty-five (25) years. If any member has completed twenty-five (25) years service with the city and thereafter becomes totally and permanently disabled for any reason whatsoever, he shall be retired on the full One Hundred and Twenty-five Dollars (\$125) per month Pension, plus any bonus accrued for additional service as provided in Section 12 hereof.

If any member has completed less than ten (10) years service and becomes totally and permanently disabled as a result of the performance of his duties or, as a consequence of such performance, he shall be retired on a monthly pension of Fifty Dollars (\$50) per month.

By total and permanent disability is meant such disability as permanently incapacitates a member from performing the usual and customary duties which he has been performing for such city.

Before any disability pension is allowed, the Pension Board shall require such medical examination and such other evidence as it may see fit to establish such total and permanent disability, as above provided. The Board's decision shall be final.

When any member has been retired for total and permanent disability, he shall be subject at all times to re-examination by the Pension Board and shall submit himself to such further examination as the Pension Board may require. If any member shall refuse to submit himself to any such examination, the Pension Board may, within its discretion, order said payments stopped. If a member who has been retired under the provisions of this Section should thereafter recover so that in the opinion of the Pension Board he is able to perform the usual and customary duties formerly handled by him for said city, and such member is reinstated or tendered reinstatement to the position he held at the time of his retirement, then the Pension Board shall order such Pension payments stopped.

If any member of the Pension System, as herein defined, who has been retired on Pension because of length of service or disability, shall die from any cause whatsoever, or if, while in the service of the city, any member shall die from any cause growing out of and/or in consequence of the performance of his duty, or shall die from any cause whatsoever after he has become entitled to Pension and shall leave a surviving widow and/or widower and/or a child or children under the age of eighteen (18) years, said Board shall order paid a monthly allowance as follows:

(a) To the widow and/or widower, so long as she/he remains a widow and/or widower and provided she/he shall have married such member prior to his/her retirement, a sum equal to one half ( $\frac{1}{2}$ ) of the retire-

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

ment benefits that the deceased would be, or had been entitled to, at the time of his/her retirement or death.

(b) To the guardian of each child the sum of Six Dollars (\$6) per month until such child reaches the age of eighteen (18) years.

(c) In the event the widow and/or widower dies after being entitled to her/his allowance as provided, or in the event there be no widow and/or widower to receive such allowance, the amount to be paid to the guardian of any dependent minor child or children under the age of eighteen (18) years shall be increased to the sum of Twelve Dollars (\$12) per month for each dependent minor child; provided, however, that the total allowance would be paid all beneficiaries or dependents, as herein provided, shall not exceed the monthly pension to be paid the pensioner had he continued to live or be retired on pension at the date of his death. Allowances or benefits payable to any minor child shall cease when such child becomes eighteen (18) years of age or marries. By the term "guardian," as used herein, shall be meant the surviving widow and/or widower, any guardian appointed by law, or the person standing in loco parentis to such dependent minor child responsible for his or her care and upbringing. As amended Acts 1959, 56th Leg., p. 1099, ch. 501, § 1(E).

Emergency. Effective June 1, 1959.

#### Termination of employment; death; re-employment

Sec. 16. When any member of such Pension System shall leave the employment of such city, either voluntarily or involuntarily, before becoming eligible for a retirement or disability pension, he shall thereupon cease to be a member of such Pension System, but shall have refunded to him all of the payments made by him into said Pension Fund by way of salary deductions without interest; provided, that if such member has completed twenty-five (25) years, or more, of service with the city, prior to becoming fifty-five (55) years of age, and leaves the employment of the city, he may allow his prior payments to remain in the Pension Fund until he becomes fifty-five (55) years of age, whereupon he will be entitled to a retirement pension for life for such amount as he had earned at the time of leaving the employment of the city; provided, it is not the intention of this amendatory Act to change the status of any former member of the Pension System whose services with the city were terminated under a previous Act.

It is contemplated that said sum shall be paid such departing member in a lump sum but if, in the opinion of the Pension Board, the funds on hand are too low to justify such lump sum payment, said payment shall be refunded on a monthly basis in such amounts as may be determined by the Pension Board.

When a member has left the service of the city, as aforesaid, and has therefore ceased to be a member of such Pension System, if such person shall thereafter be re-employed by the city, he shall thereupon be reinstated as a member of such Pension System, provided he is in good physical and mental condition as evidenced by a written certificate executed under oath by a duly licensed and practicing physician residing in said city, satisfactory to the Pension Board. Prior service of such member with such city shall not be counted toward his retirement Pension unless such member returns to the service of the city within five (5) years from his separation therefrom and also shall, within six (6) months after his re-employment by the city, repay to such Pension Fund all moneys withdrawn by him upon his separation from the service, plus interest thereon

at the rate of five per cent (5%) per annum from date of such withdrawal. As amended Acts 1959, 56th Leg., p. 1099, ch. 501, § 1(F).

Emergency. Effective June 1, 1959.

Section 2a of the amendatory Act of 1959 employees pension program under the provided that the terms of this Act shall terms of their charter. not apply to any city operating a municipal

## Art. 6243h. Texas Municipal Retirement System

### Definitions

#### Sec. II.

16. "Municipality" means any incorporated city or town now existing or hereafter created within the state; and, for the purpose of including its employees within the provisions of the fund, the Texas Municipal Retirement System, the Texas Municipal League, and any hospital district created under the Constitution and laws of the State of Texas as a public agency whose boundaries are co-terminous with those of an incorporated city or town which is a participating municipality. As amended Acts 1959, 56th Leg., 3rd C.S., p. 382, ch. 7, § 1.

Emergency. Effective Aug. 6, 1959.

25. "Standard Service Retirement Benefit" shall mean a reduced current service annuity and a reduced prior service annuity, but with a total of sixty payments assured, and calculated as provided in Section VII hereof. As amended Acts 1959, 56th Leg., p. 675, ch. 312, art. 1.

26. "Standard Disability Retirement Benefit" shall mean a current service annuity and a prior service annuity calculated as provided in Section VII hereof. As amended Acts 1959, 56th Leg., p. 675, ch. 312, art. 1.

### Revenue

Sec. IV. 1. (a) Each municipality electing to have one or more of its departments participate in this System shall designate by ordinance whether the deposits to be made to the System on account of current service of the employees of each such department shall be at the rate of three percentum (3%), five percentum (5%), or seven percentum (7%) of the earnings of such employees.

(b) Each member shall make deposits to the System at the rate of three percentum (3%), five percentum (5%), or seven percentum (7%) as fixed by the employing municipality; and a participating municipality may increase the rate of deposits by ordinance, but may not decrease the rate of deposits, except as hereinafter provided.

(c) The employing municipality by ordinance may provide that earnings of its several employees in excess of Four Thousand, Two Hundred Dollars (\$4,200.00) in any one year, or that such earnings in excess of Four Thousand, Eight Hundred Dollars (\$4,800.00) or any greater multiple of One Thousand, Two Hundred Dollars (\$1,200.00) per year which may be specified in such ordinance, shall be excluded in calculating the deposits and contributions to be made by reason of current service of its employee-members; and the amounts required to be paid in each month by the members as deposits shall exclude payments in excess of one-twelfth ( $\frac{1}{12}$ th) of the maximum annual earnings to be considered for retirement purposes as specified by such ordinance. In the event the municipality does not specify a higher maximum rate of earnings to be considered for deposits and contributions, as above authorized, then in that event earnings of its member-employees in excess of Three Thousand, Six Hundred Dollars (\$3,600.00) in any one year shall not be considered.

(d) As to each and every payroll subsequent to the effective date of participation of the Department in which such person is employed, the employing municipality shall cause to be deducted from the compensation due to each member of the System in the employment of the municipality, the deposit which the member is required under this Act to pay to the System on account of such earnings.

(e) The Treasurer or proper disbursing officer of each participating municipality shall make deductions from salaries of members as provided in this Act, and shall transmit monthly, or at such time as the Board shall designate, a certified copy of the payroll, and the amount specified to be deducted shall be paid to the Board at its home office in cash and, after making a record of all receipts, the said Board shall deposit such receipts to the credit of the Employees Saving Fund, and such Funds shall be deemed as appropriated for use according to the provisions of this Act.

(f) For the purpose of enabling the collection of members' deposits to be made as simple as possible, the city clerk or city secretary of each participating municipality shall within thirty (30) days after the beginning of each year, make up a list of all employees in its employ, who are members, set out their salaries by the month, and by the year, make a certificate to the correctness of this statement, and file the same with the Director. If additions to or deductions from this list should be made during the year, such additions or deductions shall likewise be certified.

(g) The records of the Board shall be open to public inspection and any member shall be furnished with a statement of the amount to the credit of his individual account upon written request, provided that the Board shall not be required to answer more than one such request of a member in any one year.

(h) Each member shall pay with the first payment to the Employees Saving Fund each year, and in addition thereto, a sum of One Dollar (\$1.00), which amount shall be credited to the Expense Fund, said payments for the Expense Fund to be made to the Board in the same way as payments to the Employees Saving Fund are to be made as provided in this Act; provided, however, that if said payment for the Expense Fund is not made by a member with said first payment in any year, the Board may deduct the One Dollar (\$1.00) payment for the Expense Fund from such first payment.

(i) The rate of contribution required of members of the participating Departments of any participating municipality, except the police and fire departments, may be reduced from a higher rate of contribution theretofore prescribed by ordinance, to one of the lower rates of contribution authorized by this Act, following an election by secret ballot, conducted under such rules and regulations as may be adopted and promulgated by the Board of Trustees of the System, provided the proposal to reduce the rate of contribution carries by affirmative vote of two-thirds of all the members of the affected participating Departments of such city; and provided further that the municipality by ordinance shall so provide. Such reduction in rate of contribution may be made effective at the end of the calendar year in which such election is held, provided that such election shall have been held and such ordinance adopted at least ninety (90) days before the end of said year, and written notice of such reduction shall have been given to the Director at least sixty (60) days before the end of such year. Nothing herein contained shall be construed as authorizing reduction of deposits by, or contributions on account of, members who are employed by the fire department or police department of a participating municipality. As amended Acts 1959, 56th Leg., p. 675, ch. 312, art. 2.

2. (a) Each participating municipality shall make normal contributions to the System of a percentage of each payment of earnings made to each member by such municipality as hereinafter provided and shall make Prior Service contributions to this System of a percentage of each payment of earnings made to each member by such municipality as hereinafter provided, subject, however, to the limitation that the total of such percentages shall not exceed nine and one-half per centum (9½%) of earnings in the event the rate of current service deposits required of employees of its participating departments is seven per centum (7%) of earnings; and that the total of such percentages shall not exceed seven and one-half per centum (7½%), in the event the rate of current service deposits required of employees of its participating departments is five per centum (5%) of earnings; and that the total of such percentages shall not exceed five and one-half per centum (5½%) in the event the current service deposit rate prescribed for members of participating departments (other than the fire and police departments) is three per centum (3%) of earnings. The above percentages for each participating municipality shall be determined annually by the Board from the most recent data available at the time of such determination, and shall be certified to each participating municipality prior to the beginning of each calendar year. As amended Acts 1959, 56th Leg., p. 675, ch. 312, art. 3.

#### Method of financing

##### Sec. V. 1. The Employees Saving Fund.

(a) Each participating municipality shall cause to be deducted from the salary of each member, on each and every payroll of such employer for each and every payroll period, a sum of money equal to seven per centum (7%), five per centum (5%), or three per centum (3%) of his earnings, as fixed by the ordinance of the participating municipality. In determining the amount earnable by a member in a payroll period, the Board may consider the rate of annual compensation payable to such member on the first day of the payroll period as continuing throughout such payroll period, and it may omit deductions from earnings for any period less than a full payroll period, if employee was not a member on the first day of the payroll period, and to facilitate the making of deductions, it may modify the deduction required of any member by such an amount as shall not exceed one-tenth ( $\frac{1}{10}$ ) of one per centum (1%) of the annual compensation upon the basis of which such deduction is to be made. As amended Acts 1959, 56th Leg., p. 675, ch. 312, art. 4.

##### 6. Interest Fund.

The Interest Fund is hereby created to facilitate the crediting of interest to the various other Funds. All income, interest and dividends derived from the deposits and investments authorized by this Act shall be paid into the Interest Fund. Once each year on the thirty-first day of December, interest shall be allowed and transferred to the other Funds, respectively. After interest-bearing funds have been duly credited with interest for the year in the manner provided by this Act, the Board annually shall transfer all excess earnings from the Interest Fund to one or another of the several special accounts of the Endowment Fund as in its judgment the needs and condition of the system may require. As amended Acts 1959, 56th Leg., p. 675, ch. 312, art. 4.

##### 7. Endowment Fund.

The Endowment Fund shall be a Fund in which shall be accumulated gifts, awards, funds and assets accruing to the System which are not specifically required by other Funds established by this Act. The Endow-

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

ment Fund shall consist of the following special accounts: the interest reserve account; the general reserves account; the distributive benefits account; the perpetual endowment account; and such other special accounts as the Board by resolution may establish.

(a) There shall be credited to the interest reserve account all current interest allocable to the Endowment Fund, and there shall be transferred from the Interest Fund to said account such portion of the excess earnings as in the judgment of the Board may be necessary to provide for transfer to the Expense Fund such amount as is required for the administration and maintenance of the System, and further to provide adequate reserves against insufficient earnings on investments to allow regular interest on Funds entitled thereto under the provisions of this Act. The requirements of this account shall constitute a first charge against excess interest earnings standing to the credit of the Interest Fund at the end of any year.

(b) The general reserves account shall be maintained for maintenance of adequate reserves against special requirements of other Funds of the System; and after the requirements of the interest reserve account of this Fund have been met, the Board may transfer from the Interest Fund to the general reserves account of this Fund such portion of the remaining excess earnings as in its judgment may be needed to maintain the reserves for which this account is established.

(c) After the requirements of the interest reserve account and of the general reserves account of this Fund have been satisfied, the Board may transfer any balance of excess earnings remaining in the Interest Fund at the end of a calendar year to a special account in the Endowment Fund to be denominated the "distributive benefits account." If in the discretion of the Board the amounts to the credit of said account at the end of any year are sufficient to warrant such action, the Board may by resolution authorize the payment of the amounts in such account as a distributive benefit to the persons who were annuitants of the System on the last day of said year, in the ratio that the monthly benefit of each such annuitant bears to the total of all annuity payments of the System for the final month of such year.

(d) The perpetual endowment account shall be the account in which there shall be deposited and kept such funds, gifts and awards as the grantors thereof may designate as a perpetual endowment for the System. As amended Acts 1959, 56th Leg., p. 675, ch. 312, art. 4.

#### Benefits

##### Sec. VII. 1. Service Retirement Eligibility;

(a) Any member, after one (1) year from the effective date of his membership, shall be eligible for service retirement who (1) shall have attained the age of sixty (60) years and shall have completed at least fifteen (15) years of creditable service, or (2) shall have completed twenty-eight (28) years of creditable service.

(b) Application for service retirement shall be made to the Board setting forth the date the member desires his retirement to become effective provided: (1) such application shall be executed and filed at least thirty (30) and not more than ninety (90) days prior to the date on which such retirement is to become effective; (2) the effective date specified in the application shall be the last day of a calendar month, and shall not be a date preceding the termination of the member's employment with an employalcity.



(c) With the provision that no retirement shall be effective within one (1) year after the effective date of his membership, each member shall be retired from employment by all municipalities on the last day of the calendar year in which the age of sixty-five (65) is attained, or upon the last day of the calendar year in which he completes fifteen (15) years of creditable service, whichever shall last occur; provided, however, that in exceptional cases and for substantial cause such retirement may be deferred by mutual consent of the member and the employing municipality from year to year for a period of not to exceed one (1) year at any time, but in the case of any member who was under the age of fifty (50) years on the effective date of last becoming a member, such member's retirement shall not be so deferred beyond the last day of the calendar year in which he attains the age of seventy (70) or the last day of the calendar year in which he completes fifteen (15) years of creditable service, whichever shall last occur.

(d) Any member who has accepted service retirement shall be ineligible and disqualified to resume or continue service in any participating municipality.

### 2. Standard Benefit on Service Retirement;

(a) A member who retires upon the basis of service eligibility shall be entitled to receive a "standard service retirement benefit" which shall be an allowance payable in equal monthly installments during the lifetime of the member, and in the event of his death before sixty (60) monthly payments of such benefit have been made, such payments shall continue to be paid to the member's beneficiary until the remainder of the sixty (60) monthly payments have been made. The standard service retirement benefit of a member shall consist of (1) a current service benefit which is the actuarial equivalent of his current service annuity reserve, and (2) a prior service benefit to which his accumulated prior service credits under his Prior Service Certificate, if any, entitles him under the provisions of this Act.

(b) The current service annuity reserve of the member shall be derived from:

(1) His accumulated deposits credited to his account in the Employees Saving Fund at the time of retirement; and

(2) An additional sum, from the Municipality Current Service Accumulation Fund, equal to the accumulated deposits provided by the member.

(c) If he has a Prior Service Certificate in full force and effect, the prior service benefit shall be the actuarial equivalent of his Accumulated Prior Service Credit at the time of retirement; subject, however, to the power of the Board, upon recommendation of the actuary, to reduce payments for prior service annuities as provided in Section V of this Act.

### 3. Optional Service Retirement Benefits;

(a) In lieu of the standard service retirement benefit allowable under the preceding subsection, and provided that he shall make such election and nomination within thirty (30) days after the date fixed for retirement, any member retiring for service may elect to receive the actuarial equivalent of his current service benefit in a current service annuity payable to the member during his lifetime, but with the provision that:

Option One. Upon his death, the current service annuity shall be continued throughout the life of, and paid to, such person as the member shall nominate by written designation duly acknowledged and filed with the Board within the time above provided; or

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

Option Two. Upon his death, one-half of the current service annuity shall be continued throughout the life of, and paid to, such person as the member shall nominate by written designation duly acknowledged and filed with the Board within the time above provided; or

Option Three. In the event of his death before one hundred twenty (120) monthly payments have been made of his reduced current service annuity, the payments shall be continued to his beneficiary (or to his estate) until the remainder of the one hundred twenty (120) monthly payments have been made; or

Option Four. Some other benefit or benefits may be paid either to the member, or to such person or persons as he may nominate, provided the same shall be approved by the Board, and provided such other benefit or benefits, together with the current service annuity of the member, shall be certified by the actuary to be the equivalent in actuarial value of the current service annuity reserve to which the member is entitled at the date fixed for his retirement.

(b) Any member who makes an effective election to have his current service benefit paid in accordance with Option One, Option Two, Option Three or Option Four, shall likewise receive his prior service benefit, if any, in an adjusted annuity payable upon the same conditions and to the same beneficiary as that selected for his current service benefit, but with the further proviso that all prior service benefits shall be subject to reduction by the Board under the circumstances provided for in Section V of this Act.

#### 4. Deferred Service Retirement with Optional Selection;

Any member who has accumulated sufficient creditable service and who is otherwise qualified for service retirement shall have the right to apply in writing (on such forms as the Board may prescribe) for "deferred retirement" under this subsection, and continue in service of a participating municipality, accumulating additional creditable service, upon the terms and with the effect hereinbelow provided.

In the application for deferred retirement, the member shall apply for retirement to be effective on or before the last day of the calendar year in which he reaches seventy (70) years of age, and shall select the standard benefit or one of the optional benefits authorized under Subsection 3, above, and designate the beneficiary of the optional benefit selected. After filing of the application for deferred retirement, the member may continue in the service of a participating municipality, and he may thereafter retire at the end of any month, by filing an amended application in writing for commencement of payment of benefits with the Board at least thirty (30) days before the amended effective date of retirement; or, if such member shall die while in service, or before payments of his deferred annuity have begun, he shall be considered to have retired effective as of the last day of the calendar month preceding the month in which his death occurs, and his optional selection shall be effective as of that date. Any such member who has applied for deferred retirement may from time to time, prior to beginning of payments of his annuity to him, file an amended application, changing his written selection of optional allowance and/or designated beneficiary. A member who executes an application for deferred retirement will automatically be retired on the last day of the calendar year in which he becomes seventy (70) years of age. A member who is entitled to have applied for deferred retirement hereunder, but who has not executed and filed an application therefor, shall in case of his death be considered as having retired on a standard benefit effective at the end of the calendar month preceding that in which he dies; or, at the election of his beneficiary, such deceased member shall be considered as hav-

ing been an active member at death and the beneficiary may thereby elect to receive the accumulated contributions of the deceased member.

5. Disability Retirement Eligibility;

With the provision that no retirement shall be effective within one (1) year after the effective date of membership, upon the application of a member or of his employer or his legal representative acting in his behalf, any member with less than ten (10) years of creditable service may be retired by the Board, not less than thirty (30) and not more than ninety (90) days next following the date of filing of such application, on a disability retirement allowance, provided that the Medical Board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity is the direct result of injuries sustained subsequent to the effective date of membership by external and violent means as a direct and proximate result of the performance of his duties, that such incapacity is likely to be permanent and that such member should be retired.

With the provision that no retirement shall be effective within one (1) year after the effective date of membership, upon the application of a member or of his employer or his legal representative acting in his behalf, any member with more than ten (10) years of creditable service, who is not eligible for service retirement, may be retired by the Board, not less than thirty (30) and not more than ninety (90) days next following the date of filing of such application on a disability retirement allowance, provided that the Medical Board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity is likely to be permanent and that such member should be retired.

6. Standard Disability Retirement Benefits;

Upon retirement for disability a member shall receive a disability retirement benefit consisting of a current service annuity, which shall be the actuarial equivalent of his current service annuity reserve, and a prior service annuity to which his Accumulated Prior Service Credit under his Prior Service Certificate, if any, entitles him under the provisions of this Act.

(a) His current service annuity reserve shall be derived from:

(1) His accumulated deposits credited to his account in the Employees Saving Fund at the time of retirement; and

(2) An additional sum from the Municipality Current Service Accumulation Fund equal to the accumulated deposits provided by the member.

(b) If he has a Prior Service Certificate in full force and effect, the prior service annuity shall be the actuarial equivalent of his Accumulated Prior Service Credit at time of retirement. Upon the recommendation of the actuary, the Board shall have the power to reduce payments for prior service annuities as provided in Section V of this Act.

7. Requirements and Conditions Applicable to Disability Benefits;

Once each year during the first five (5) years following retirement of a member on a disability retirement allowance, and once in every three-year period thereafter, the Board may, and upon his application shall, require any disability annuitant who has not yet attained the age of sixty (60) years to undergo a medical examination, such examination to be made at the place of residence of said annuitant or any other place mutually agreed upon, by a physician or physicians designated by the Board. Should any disability annuitant who has not yet attained the age of sixty (60) years refuse to submit to at least one (1) medical examination in any such periods by a physician or physicians designated by the Board, his

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

allowance shall be discontinued until his withdrawal of such refusal, and should his refusal continue for one (1) year, all his rights in and to his allowance shall be revoked by the Board.

(a) Should the Medical Board report and certify to the Board that such disability annuitant is no longer physically or mentally incapacitated for the performance of duty, or that such disability annuitant is engaged in or is able to engage in a gainful occupation, and should the Board by a majority vote concur in such report, then his allowance shall be discontinued.

(b) Should a disability annuitant under the age of sixty (60) years be restored to active service in a participating department of a participating municipality, his retirement allowance shall cease, he shall again become a member of the System, and any reserves on his current service annuity at that time in the Current Service Annuity Reserve Fund shall be transferred to the Employees Saving Fund and to the Municipality Current Service Accumulation Fund, respectively, in proportion to the original sum transferred to the Current Service Annuity Reserve Fund at retirement and the reserves under his prior service annuity, if any, in the Prior Service Annuity Reserve Fund at that time shall be transferred to the Municipality Prior Service Accumulation Fund. Upon restoration to membership, any Prior Service Certificate on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect, and in addition, upon his subsequent retirement, he shall be credited with all his membership service. Should a disability annuitant die or be removed from the disability list for any cause other than restoration to active service, an amount equal to the amount by which such annuitant's accumulated deposits at the time of disability retirement exceed the current service annuity payments received by such annuitant under his disability allowance, if any such excess exists, shall be paid from the Current Service Annuity Reserve Fund to such annuitant if living; otherwise, such amount shall be paid to his estate unless he has directed such amount to be paid otherwise.

#### 8. Return of Deposits Upon Other Terminations;

Should a member cease to be an employee of a participating department except by death or retirement under the provisions of this Act, he shall, upon application, be paid in full the amount of the accumulated deposits standing to the credit of his individual account in the Employees Saving Fund. In the event of death of a member before retirement, and prior to eligibility of the member to deferred retirement as hereinafter defined, the amount of his accumulated deposits standing to the credit of his individual account in the Employees Saving Fund shall be paid to his estate unless he has directed the account to be paid otherwise. Seven (7) years after cessation of service, if no previous demand has been made, any accumulated deposits of a contributor shall be returned to him or to his estate. If the contributor or the administrator of his estate cannot then be found, his accumulated deposits shall be escheated to the Retirement System, and shall be credited to the permanent endowment account of the Endowment Fund. As amended Acts 1959, 56th Leg., p. 675, ch. 312, art. 5.

### Supplemental Benefits Funds

#### Sec. XIII. 1. Establishment;

Upon the terms and conditions hereinafter stated, the Board of Trustees shall establish in addition to the several Funds provided for in Section V, an additional and separate fund to be known as the "Supplemental Benefits Fund" to provide for the payment of supplemental benefits, as

hereinafter provided, for employees of municipalities electing to participate in said Fund who are forced to retire because of disabilities sustained as a direct and proximate result of injuries sustained in the course of their employment.

2. Participation in the Fund;

(a) Any municipality which has elected to have one or more of its departments participate in this System may elect to have the employees of all such departments participate in and be covered by the Supplemental Benefits Fund. Such election is authorized to be made in any manner authorized by Subsection 1 of Section III concerning participation in the System.

(b) A municipality which once elects to participate in the Supplemental Benefits Fund may refuse to add new departments or new employees, but shall never discontinue participation in the Fund as to members who are covered into the Fund.

(c) Membership in the Fund shall be terminated by cessation of membership in the System.

3. Contributions to the Supplemental Benefits Fund;

(a) Each municipality which elects to have participation in the Supplemental Benefits Fund shall contribute to that Fund, in addition to normal contributions and prior service contributions required pursuant to Section IV, such additional percentage of each payment of earnings as may be fixed by the Board, upon the recommendation of the actuary, as necessary to accumulate the reserves needed to pay the anticipated benefits which may accrue during the first year of existence of the Fund, and from year to year thereafter, provided the rate of contribution to the Fund shall not exceed one-half of one percentum ( $\frac{1}{2}\%$ ) of the earnings of employees of such municipality who are covered under the Fund; provided, further, that the rate of contribution to the Supplemental Benefits Fund shall not be subject to the limitation on contributions prescribed by Subsection 2 of Section IV, but shall be in addition thereto.

4. Supplemental Benefits for Covered Employees;

(a) Any covered employee of a municipal department participating in the Supplemental Benefits Fund may be retired with a supplemental disability annuity as herein authorized, provided that the Medical Board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated so as to be unable to engage in a gainful occupation, and provided the Board shall find that such incapacity is the direct result of injuries sustained subsequent to effective date of his coverage in the Supplemental Benefits Fund as a direct and proximate result of the performance of the duties of his employment, and that such incapacity is likely to be permanent.

If the member is not entitled to service retirement, the supplemental disability annuity shall be an amount which, together with the amount of his standard disability benefit, will equal one-half of his average monthly earnings for service rendered as an employee of a participating department of the municipality during the sixty (60) months immediately preceding the date of his said injury, or if there be less than sixty (60) months of such service, the average earnings computed for the number of months of such service during such sixty (60) months period. If the member is entitled to service retirement, the supplemental disability annuity shall be an amount which, together with the amount of the standard service retirement benefit to which he is entitled, shall equal one-half of his average monthly earnings for service rendered as an employee of a participating department of the municipality during the sixty (60) months immediately preceding the date of said injury, or if there be less than sixty

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

(60) months of such service, the average earnings computed for the number of months of such service during such sixty (60) months period. Provided, however, that in calculating the average monthly earnings upon which the supplemental benefit shall be determined, earnings in any month in excess of those on which the member was required to make contributions to the System shall be disregarded.

(b) Supplemental disability benefits payable from the Supplemental Benefits Fund shall be subject to the same conditions prescribed for standard disability benefits, and if the standard disability benefit is discontinued or suspended for any reason, the supplemental disability benefits from the Supplemental Benefits Fund shall likewise be discontinued or suspended.

(c) The Board shall have the power to reduce proportionately all supplemental benefits payable from the Supplemental Benefits Fund at any time and for such period of time as is necessary so that payments of supplemental benefits from such Fund in any year shall not exceed the available assets in the Fund in such year.

#### 5. Operative Date of the Fund;

The Supplemental Benefits Fund shall not become operative until a sufficient number of municipalities elect to participate in the Fund to cover into the Fund at least four thousand members of the System; the Board shall determine the operative date, and shall notify municipalities which have elected to participate the effective date of their participation in the Fund, which shall not precede the operative date of the Fund as herein provided. Municipalities electing to participate in the Fund shall begin contributions to the Fund from the effective date of participation in the Fund. Municipalities electing to participate after the operative date of the Fund shall begin participation therein on the first day of the second calendar month after notice to the Board of its election to enter the Fund.

#### 6. Management of the Fund;

The Supplemental Benefits Fund shall be managed, controlled and handled as are other funds of the System. Regular interest shall be allowed by the Board on December 31 in each year on the mean amount in the Fund during the year, and the sum so allowed shall be transferred to the Supplemental Benefits Fund from the Interest Fund at the time and in the manner in which interest is allowed to other interest-bearing funds of the System. Added Acts 1959, 56th Leg., p. 675, ch. 312, art. 6.

Emergency. Effective May 30, 1959.

Tex.St.Supp. '60—33

## TEXAS PROBATE CODE

### CHAPTER V—PROBATE, GRANT OF ADMINISTRATION, AND GUARDIANSHIP

§ 72. Proceedings before death; administration in absence of direct evidence of death; distribution; limitation of liability; restoration of estate; validation of proceedings

The probate of a will or administration of an estate of a living person shall be void; provided, however, that the court shall have jurisdiction to determine the fact, time and place of death, and where application is made for the grant of letters testamentary or of administration upon the estate of a person believed to be dead and there is no direct evidence that such person is dead but the death of such person shall be proved by circumstantial evidence to the satisfaction of the court, such letters shall be granted. Distribution of the estate to the persons entitled thereto shall not be made by the personal representative until after the expiration of three (3) years from the date such letters are granted. If in a subsequent action such person shall be proved by direct evidence to have been living at any time subsequent to the date of grant of such letters, neither the personal representative nor anyone who shall deliver said estate or any part thereof to another under orders of the court shall be liable therefor; and provided, further, that such person shall be entitled to restoration of said estate or the residue thereof with the rents and profits therefrom, except real or personal property sold by the personal representative or any distributee, his successors or assigns, to bona fide purchasers for value, in which case the right of such person to the restoration shall be limited to the proceeds of such sale or the residue thereof with the increase thereof. In no event shall the bonds of such personal representative be void provided, however, that the surety shall have no liability for any acts of the personal representative which was done in compliance with or approved by an order of the court. Probate proceedings upon estates of persons believed to be dead brought prior to the effective date of this Act and all such probate proceedings then pending, except such probate proceedings contested in any litigation pending on the effective date of this Act, are hereby validated in so far as the court's finding of death of such person is concerned. As amended Acts 1959, 56th Leg., p. 950, ch. 442, § 1.

Emergency. Effective May 30, 1959.

Section 2 of the amendatory Act of 1959 repealed all conflicting laws and parts of

laws to the extent of such conflict; section 3 contained a severability clause.

### CHAPTER VIII—PROCEEDINGS DURING ADMINISTRATION AND GUARDIANSHIP

§ 348. Permissible Terms of Sale of Real Estate

(a) **For Cash or Credit.** The real estate may be sold for cash, or for part cash and part credit, or the equity in land securing an indebtedness may be sold subject to such indebtedness, or with an assumption of such indebtedness, at public or private sale, as appears to the court to be for the best interest of the estate. When real estate is sold partly on credit, the cash payment shall not be less than one-fifth of the pur-

chase price, and the purchaser shall execute a note for the deferred payments payable in monthly, quarterly, semi-annual or annual installments, of such amounts as appears to the court to be for the best interest of the estate, to bear interest from date at a rate of not less than four percent (4%) per annum, payable as provided in such note. Default in the payment of principal or interest, or any part thereof when due, shall, at the election of the holder of such note, mature the whole debt. Such note shall be secured by vendor's lien retained in the deed and in the note upon the property sold, and be further secured by deed of trust upon the property sold, with the usual provisions for foreclosure and sale upon failure to make the payments provided in the deed and notes. As amended Acts 1959, 56th Leg., p. 636, ch. 290, § 1.

Emergency. Effective May 30, 1959.

### § 390. Investment in Life Insurance or Annuities

(a) **Life Insurance Company Defined.** By the term "life insurance company" as used herein, is meant any stock or mutual legal reserve life insurance company that maintains the full legal reserves required under the laws of this state, and that is licensed by the State Board of Insurance to transact the business of life insurance in this state.

(b) **New Insurance and Annuities.** The guardian of the estate may invest in policies of life, term or endowment insurance, or in annuity contracts, or both, issued by a life insurance company as herein defined, subject, however, to the following conditions and limitations:

(1) The guardian shall first apply to the court for an order authorizing the guardian to make such investment. The application shall include a report showing in detail the financial condition of the estate at the time such application is made; the name and address of the life insurance company from which the policy or annuity contract is to be purchased and that such company is then licensed by the State Board of Insurance to transact such business in this state; a statement of the face amount and plan of the policy of insurance sought to be purchased and of the amount, frequency and duration of the annuity payments to be provided by the annuity contract sought to be purchased; a statement of the amount, frequency and duration of the premiums required by the policy or annuity contract; and a statement of the cash value of the policy or annuity contract at its anniversary nearest the twenty-first birthday of the ward, assuming that all premiums to such anniversary are paid and that there is no indebtedness against the policy or contract incurred in accordance with its terms.

(2) The policy or policies of insurance shall be on the life of the ward, his father, mother, spouse, child, brother, sister, grandfather, grandmother, or a person in whose life the ward may have an insurable interest.

(3) The ward, his or her estate, father, mother, spouse, child, brother, sister, grandfather or grandmother, and none other, shall be the beneficiary or beneficiaries of any such policy of insurance and of the death benefit of any such annuity contract, and the ward, and none other, shall be the annuitant in any such annuity contract.

(4) The control of any such policy or annuity contracts, and of the incidents of ownership therein, shall be vested in the guardian during the life and disability of the ward.

(5) The policy or annuity contract shall not be amended or changed during the life and disability of the ward except upon application to and order of the court.



(c) **Old or Existing Insurance or Annuities.** If a policy of life, term or endowment insurance or a contract of annuity is owned by the ward when a proceeding for the appointment of a guardian is begun, and it is made to appear that the company issuing such policy or contract of annuity is a life insurance company as herein defined, it shall be lawful to continue such policy or contract in full force and effect. All future premiums may be paid out of surplus funds of said ward. Provided, however, that the guardian shall apply to the court for an order to continue said policy or contract, or both, according to their existing terms or to modify the same to fit any new developments affecting the welfare of the ward, and provided further, that before any such application is granted the guardian shall file a report in said court showing in detail the financial condition of the estate of the ward at the time the application is filed.

(d) **Order on Application.** The court, if satisfied by the application and the evidence adduced at the hearing that it is to the interest of the ward to grant such application, shall enter its order granting same.

(e) **Exclusive Property of Ward on Termination of Guardianship.** Each and every right, benefit, and interest accruing under any contract for insurance or annuity coming under the provisions hereof shall become the exclusive property of said ward or wards when disability has been terminated. As amended Acts 1959, 56th Leg., p. 642, ch. 296, § 1.

Effective 90 days after May 12, 1959, date of adjournment.

#### **§ 407. Citation Upon Presentation of Account for Final Settlement**

Upon the filing of an account for final settlement by temporary or permanent personal representatives of the estates of decedents or wards, or of the persons of wards, citation shall contain a statement that such final account has been filed, the time and place when it will be considered by the court, and a statement requiring the person or persons cited to appear and contest the same if they see proper. Such citation shall be issued by the county clerk to the persons and in the manner set out below.

1. In case of the estates of deceased persons, such notice as shall be directed by the court by written order.

2. If a ward be a living resident of this state, and his residence be known, he shall be cited by personal service.

3. If one who has been a ward be deceased, but there be a representative of his estate other than the one filing the account, such representative shall be cited by personal service.

4. If a ward be deceased, or if his residence be unknown, or if he is a non-resident of this state, and no representative of his estate has been appointed and qualified in this state, the citation to him or to his estate shall be by publication.

5. If the court deems further additional notice necessary, including publication, it shall require the same by written order. As amended Acts 1959, 56th Leg., p. 641, ch. 294, § 1.

Emergency. Effective May 30, 1959.

## TITLE 110A—PUBLIC OFFICES

Art.

6252—6a. Inter-agency transfer of personal property [New].

Art.

6252—10. Emergency Interim Executive Succession Act [New].

## Art. 6252—6a. Inter-agency transfer of personal property

Section 1. Any agency of the State of Texas as defined by Section 2 of this Act is hereby authorized to transfer any personal property of the state under its control or jurisdiction to any other agency of the State of Texas as defined by Section 2 of this Act, with or without reimbursement between the agencies; provided, however, that the provisions of this Act shall not apply to any real property.

When any personal property under the control or jurisdiction of one agency is transferred to the control or jurisdiction of any other agency pursuant to the provisions of this Act, such transfers shall be immediately and simultaneously reported to the Comptroller of Public Accounts by the transferrer and the transferee on forms prescribed by the Comptroller of Public Accounts, and it shall be the duty of the Comptroller of Public Accounts to adjust the inventory records of the agencies involved in making the transfer. Whenever any transfer made pursuant to this Act is made with reimbursement from funds deposited in the State Treasury, the transferee shall issue a P-1 Voucher payable to the transferrer, and the Comptroller of Public Accounts shall issue warrants for reimbursement.

Sec. 2. The term "agency" includes any department, board, bureau, commission, court office, institution, university, college and any service or part of a state institution of higher education.

Sec. 3. The provisions of this Act shall be cumulative of all other laws or parts of laws and all agencies shall have the power to make transfers provided for in Section 1 of this Act independent of any other law general or special. Acts 1959, 56th Leg., p. 651, ch. 302.

Emergency. Effective May 30, 1959.

Failure to perform duties relating to personal property of the state, see Vernon's Ann.P.C., art. 146 et seq.

## Title of Act:

An Act authorizing any and all agencies of the State of Texas to make transfers of personal property to one another with or

without reimbursement; defining agencies; prescribing certain duties of the Comptroller of Public Accounts with regard to such transfers; providing other provisions relating thereto; providing that this Act shall be cumulative; and declaring an emergency. Acts 1959, 56th Leg., p. 651, ch. 302.

## Art. 6252—10. Emergency Interim Executive Succession Act

Section 1. This Act shall be known and may be cited as the "Emergency Interim Executive Succession Act."

Sec. 2. Unless otherwise clearly required by the context, the following term as used in this Act is defined as follows:

(a) "Unavailable" means that the Governor, Lieutenant Governor, President Pro Tempore, or others hereafter named in the order of succession to the office of Governor, are not able to exercise the powers and discharge the duties of the office of Governor for any reason specified in the Constitution.

Sec. 3. In the event that the Governor, Lieutenant Governor, or President Pro Tempore of the Senate be unavailable, the Speaker of the House of Representatives, the Attorney General, or the Chief Jus-

tice of each of the Courts of Civil Appeals, in the numerical order of the Supreme Judicial Districts in which they serve, shall, in the order named, if the preceding officers shall be unavailable, exercise the powers and discharge the duties of the office of Governor until a new Governor is elected and qualified or until a preceding named officer becomes available; provided, that only the President Pro Tempore and the Speaker who hold such offices at the time the Governor and Lieutenant Governor first become unavailable shall be qualified under this provision. Acts 1959, 56th Leg., p. 527, ch. 232.

Effective 90 days after May 12, 1959, date of adjournment.

Death, disability or failure to qualify of person receiving highest vote for governor, see Const. art. 4, § 3a.

Death or permanent incapacity of governor-elect or lieutenant governor-elect, see V.A.T.S. Election Code, art. 8.46.

**Title of Act:**

An Act providing for the continuity of the functions of the office of Governor by extending the line of succession to said office; and declaring an emergency. Acts 1959, 56th Leg., p. 527, ch. 232.

**TITLE 112—RAILROADS**

**CHAPTER ELEVEN—RAILROAD COMMISSION OF TEXAS**

Art.

6478a. Reception in evidence of schedules, classifications and tariffs of rates, fares and charges [New].

Art. 6447. [6653] [4561] The Commission

Travel Regulations Act of 1959, see art. 6823a.

Art. 6462. [6664] [4568] Complaints, how framed

Reception in evidence of schedules, classifications, fares and charges, see art. 6478a.

Art. 6478a. Reception in evidence of schedules, classifications and tariffs of rates, fares and charges

Printed copies of schedules, classifications and tariffs of rates, fares and charges, and supplements thereto, filed with the Interstate Commerce Commission or the Railroad Commission of Texas, which show respectively an Interstate Commerce Commission number, which may be stated in abbreviated form as I. C. C. No. ———, and an effective date, or which show respectively a Railroad Commission of Texas number, which may be stated in abbreviated form as R. C. T. No. ———, and an effective date, may be received in evidence without certification and shall be presumed to be correct copies of the original schedules, classifications, tariffs and supplements on file with the Interstate Commerce Commission or on file with the Railroad Commission of Texas. Acts 1959, 56th Leg., p. 218, ch. 127, § 1.

Emergency. Effective April 29, 1959.

Admissibility of evidence in general, see art. 3720 et seq.

Evidence taken before commission, use in proceeding against railroad, see art. 6462.

**Title of Act:**

An Act providing that printed copies of schedules, classifications and tariffs of

rates, fares and charges, and supplements thereto, filed with the Interstate Commerce Commission or the Railroad Commission of Texas, may be received in evidence without certification and shall be presumed to be correct copies of the originals; prescribing conditions; and declaring an emergency. Acts 1959, 56th Leg., p. 218, ch. 127.

## TITLE 113A—REAL ESTATE DEALERS

### Art. 6573a. Real estate dealers licenses

#### License Prerequisite to Suit for Compensation

Sec. 19. No person or company may bring or maintain any action for the collection of compensation for the performance in this State of any of the Acts set out in Subdivision (1) of Section 4 hereof without alleging and proving that the person or company performing the brokerage services was a duly licensed Real Estate Broker or Salesman at the time the alleged services were commenced. As amended Acts 1959, 56th Leg., p. 872, ch. 397, § 1.

In section 19, the 1959 amendment deleted, after the words "person or company", the following: "engaged in the business of acting in the capacity of a Real Estate Broker or a Real Estate Salesman within this State", substituted "may bring" for "shall bring", inserted, after the word

"performance", the words "in this State" and substituted "services were commenced" for "cause of action arose".

Section 2 of Acts 1959, 56th Leg., p. 872, ch. 397 provided: "Nothing herein shall affect any cause of action which arose prior to the effective date of this Act."

## TITLE 115—REGISTRATION

### CHAPTER THREE—EFFECT OF RECORDING

#### Art. 6640. [6837] Suit for land; notice to be filed

Upon the filing of the plaintiff's statement or petition in any eminent domain proceeding, or during the pendency of any suit or action, involving the title to real estate, or seeking to establish any interest or right therein, or to enforce any lien, charge or encumbrance against the same, any party seeking affirmative relief therein, may file a notice of the pendency of such proceeding or suit with the county clerk of each county where such real estate, or any part thereof, is situated. Such notice shall be signed by the party filing the same, his agent or attorney, setting forth the number, if any, and style of the cause, the court in which pending, the names of the party thereto, the kind of proceeding or suit and description of the land affected. As amended Acts 1959, 56th Leg., p. 689, ch. 315, § 1.

Amendment. The 1959 amendment authorized the filing of notice of pendency of suit upon the filing of plaintiff's statement or petition.

TITLE 116—ROADS, BRIDGES, AND FERRIES

CHAPTER ONE—STATE HIGHWAYS

1A. CONSTRUCTION AND MAINTENANCE

Art. 6674m. Partial payments

Said contracts may provide for partial payments to an amount not exceeding ninety-five per cent (95%) of the value of the work done. Five per cent (5%) of the contract price shall be retained until the entire work has been completed and accepted, and final payment shall not be made until it is shown that all sums of money due for any labor, materials, or equipment furnished for the purpose of such improvements made under any such contract have been paid. As amended Acts 1959, 56th Leg., p. 138, ch. 434, § 1.

The 1959 amendment substituted "ninety-five per cent (95%)" and "Five per cent (5%)" for "(90%)" and "Ten per centum" respectively.

Art. 6674n—2. Condemnation of rights of way and easements within municipalities by counties

Section 1. The right of eminent domain within the boundaries of a municipality with prior consent of the governing body of such municipality is hereby conferred upon counties of the State of Texas for the purpose of condemning and acquiring land, right of way or easement in land, private or public, except property used for cemetery purposes, where said land, right of way or easement is, in the judgment of the Commissioners Court of such county, necessary or convenient to any road which forms or will form a connecting link in the county road system or a connecting link in a State Highway.

All such condemnation proceedings shall be instituted under the direction of the Commissioners Court, and in the name of the county, and the procedure shall be the same as that set out in Title 52, Articles 3264 to 3271, inclusive, Revised Civil Statutes of Texas, 1925, as amended. Provided, that no appeal from the finding and assessment of damages by the commissioners appointed for that purpose shall have the effect of causing the suspension of work by the county in connection with which the land, right of way or easement is sought to be acquired; and provided further that in case of appeal counties shall not be required to give bond, nor shall they be required to give bond for costs. Acts 1959, 56th Leg., p. 566, ch. 257.

Section 2 of the Act of 1959 repealed all conflicting laws and parts of laws to the extent of such conflict.

Acquisition of,

Land by county for United States Government, see art. 5248e.

Right-of-way by county for stream bed diversion in locating roads, see act 6789a.

County rights and powers, see art. 1572 et seq.

Eminent domain by counties, see art. 3264a.

Art. 6674s. Workmen's Compensation Insurance for Highway Department Employees

Workmen's Compensation Act and other acts, application of

Sec. 7. Unless otherwise provided herein, Section 6 as amended by Acts, 1927, Fortieth Legislature, page 84, Chapter 60, Section 1<sup>1</sup>; 7; 7b;

7c, as amended Acts, 1957, Fifty-fifth Legislature, page 1186, Chapter 397, Section 1<sup>2</sup>; 7d, as amended Acts, 1957, Fifty-fifth Legislature, page 1186, Chapter 397, Section 1<sup>3</sup>; 8, as amended by House Bill No. 10, Acts, 1947, Fiftieth Legislature, as amended Acts, 1957, Fifty-fifth Legislature, page 1186, Chapter 397, Section 1<sup>4</sup>; 8a; 8b; 9, as amended Acts, 1931, Forty-second Legislature, page 303, Chapter 178<sup>5</sup>; 10, as amended by House Bill No. 10, Acts, 1947, Fiftieth Legislature, as amended Acts, 1957, Fifty-fifth Legislature, page 1186, Chapter 397, Section 1<sup>6</sup>; 11, as amended by House Bill No. 10, Acts, 1947, Fiftieth Legislature, as amended Acts, 1957, Fifty-fifth Legislature, page 1186, Chapter 397, Section 1<sup>7</sup>; 11a, as added Acts, 1927, Fortieth Legislature, page 41, Chapter 28, Section 1<sup>8</sup>; 12, as amended by House Bill No. 10, Acts, 1947, Fiftieth Legislature, as amended Acts, 1957, Fifty-fifth Legislature, page 1186, Chapter 397, Section 1<sup>9</sup>; 12a; 12b; 12c; 12d, as amended Acts, 1931, Forty-second Legislature, page 260, Chapter 155, Section 1<sup>10</sup>; 12e; 12f; 12i, as amended Acts, 1931, Forty-second Legislature, page 259, Chapter 154, Section 1<sup>11</sup>; 13; 14; 15; 15a; 16; 17; 19, as amended Acts, 1927, Fortieth Legislature, page 383, Chapter 259, Section 1, as amended Acts, 1931, Forty-second Legislature, page 133, Chapter 90, Section 1<sup>12</sup>; 20; 21; 22; 23; 24; 25; 26; 27, as added by Senate Bill No. 40, Acts, 1947, Fiftieth Legislature; Acts, 1931, Forty-second Legislature, page 415, Chapter 248, Section 1,<sup>13</sup> all being Sections of Article 8306 of the Revised Civil Statutes of Texas, 1925, as amended; Section 4a, as amended by Senate Bill No. 40, Acts, 1947, Fiftieth Legislature<sup>14</sup>; 6a; 11, and 12 of Article 8307 of the Revised Civil Statutes of Texas, 1925<sup>15</sup>; and 13 and 14 of Article 8307, as added by Senate Bill No. 40, Acts, 1947, Fiftieth Legislature<sup>16</sup>; and Sections 4 and 5 of Article 8309 of the Revised Civil Statutes of Texas, 1925, and Senate Bill No. 64, Acts, Regular Session, Forty-fifth Legislature,<sup>17</sup> are hereby adopted and shall govern insofar as applicable under the provisions of this law. Provided that whenever in the above adopted Sections of Articles 8306, 8307 and 8309 of the Revised Civil Statutes of Texas, 1925, the words "association," "subscriber," or "employer," or their equivalents appear in such Articles, they shall be construed to and shall mean "the Department." As amended Acts 1947, 50th Leg., p. 722, ch. 358, § 2; Acts 1959, 56th Leg., p. 862, ch. 388, § 1.

<sup>1</sup> Article 8306, § 6.

<sup>2</sup> Article 8306, §§ 7, 7b, 7c.

<sup>3</sup> Article 8306, § 7d.

<sup>4</sup> Article 8306, § 8.

<sup>5</sup> Article 8306, § 9.

<sup>6</sup> Article 8306, § 10.

<sup>7</sup> Article 8306, § 11.

<sup>8</sup> Article 8306, § 11a.

<sup>9</sup> Article 8306, § 12.

<sup>10</sup> Article 8306, §§ 12a to 12d.

<sup>11</sup> Article 8306, §§ 12e, 12f, 12i.

<sup>12</sup> Article 8306, §§ 13 to 17, 19.

<sup>13</sup> Article 8306, §§ 20 to 27.

<sup>14</sup> Article 8307, § 4a.

<sup>15</sup> Article 8307, §§ 11, 12.

<sup>16</sup> Article 8307, §§ 13, 14.

<sup>17</sup> Article 8309, §§ 4, 5.

Section 2 of the amendatory Act of 1959 contained a severability clause.

2. REGULATION OF VEHICLES

Art. 6675a—5b. Fees; vehicles of nonprofit service organizations designed for parade purposes

Section 1. The annual license fee for the registration of any motor vehicle owned and operated by a nonprofit service organization and designed, constructed and used primarily for parade purposes shall be Ten (\$10.00) Dollars.

Sec. 2. The provisions of this Act shall not apply to any motor vehicle on which an annual license fee for registration has been paid pursuant to other laws of this state. Acts 1959, 56th Leg., p. 645, ch. 298.

Section 3 of the Act of 1959 contained a severability clause.

Title of Act:

An Act prescribing the annual license fee for the registration of a motor vehicle owned and operated by a nonprofit service

organization and designed, constructed and used primarily for parade purposes, where such vehicle is not licensed for registration under other laws of this state; providing a severability clause; and declaring an emergency. Acts 1959, 56th Leg., p. 645, ch. 298.

Art. 6675a—6b. Short term commercial motor vehicle permit to haul loads of larger tonnage

Section 1. When a commercial motor vehicle, truck-tractor, trailer or semitrailer which has been registered by the owner, is used for the transportation of his own seasonal agricultural products to market, or to other points for sale or processing, or the transportation of seasonal laborers from their place of residence, and materials, tools, equipment and supplies, without charge, from the place of purchase or storage, to a farm or ranch exclusively for use on such farm or ranch, the owner may, by paying an additional fee, receive a short-term permit allowing him to haul loads of larger tonnage for a limited period of less than one (1) year. No such permit shall be issued for less than three (3) months, and no such permit shall extend beyond the expiration of the regular license. The fee shall be a percentage of the difference between the owner's regular annual registration fee and the annual fee for the desired tonnage, and shall be computed according to the following table:

1-quarter	(3 consecutive months).....	30%
2-quarters	(6 consecutive months).....	60%
3-quarters	(9 consecutive months).....	90%

Sec. 2. No such permit shall be issued unless such registration fee has been paid for hauling of such larger tonnage prior to the actual hauling thereof. The quarters for which such additional permits are to be issued shall be calendar quarters, the first such quarter to commence on April 1st of each year.

Sec. 3. The State Highway Department shall design, prescribe and furnish for each vehicle so registered, the necessary sticker, plate or other means of indicating the additional weight and period of time for which such additional registration is made. Acts 1959, 56th Leg., p. 981, ch. 456.

Title of Act:

An Act providing for the issuance of permits upon the payment of a prescribed fee, to certain commercial motor vehicle own-

ers to haul loads of larger tonnage; and declaring an emergency. Acts 1959, 56th Leg., p. 981, ch. 456.

## Art. 6675a—8a. Fees; motor buses

Annual license fees for the registration of motor buses shall be based upon the "gross weight" of the vehicle as follows:

Gross Weight in pounds	Fee Per 100 lbs. or Fraction thereof
1 - 6,000	\$0.44
6,001 - 8,000	0.495
8,001 - 10,000	0.605
10,001 - 17,000	0.715
17,001 - 24,000	0.77
24,001 - 31,000	0.88
31,001 - and up	0.99

As amended Acts 1959, 56th Leg., p. 170, ch. 96, § 1.

## Art. 6687b. Drivers', chauffeurs', and commercial operators' licenses; accident reports

## Sec. 15. Disposition of fees

All fees and charges required by this Act and collected by an officer or agent of the Department shall be remitted without deduction on Monday of each week to the Department at Austin, Texas, and all such fees so collected shall be deposited in the State Treasury in a fund to be known as the Operator's and Chauffeur's License Fund.

Fees and charges deposited in the Operator's and Chauffeur's License Fund under the provisions of this Act may, upon appropriation by the Legislature, be used by the Texas Department of Public Safety for the payment of salaries, purchase of equipment and supplies, maintenance, and any and all other necessary expenses incident to the operation of the Texas Department of Public Safety in carrying out the duties as are by law required of such Department; except that the Legislature may also appropriate from said fund for the purpose of paying the expenses of the Fifty-fifth Legislature as described in Chapter 1, Acts of the Fifty-fifth Legislature, Regular Session as amended, and may transfer and appropriate moneys from said fund for the purpose of paying the expenses of the Fifty-sixth Legislature. Any remaining balance in the Operator's and Chauffeur's License Fund on September 1 of each and every year shall remain in such fund and shall be available for appropriation by the Legislature for the maintenance and support of the Texas Department of Public Safety as set forth hereinabove. As amended Acts 1959, 56th Leg., p. 1, ch. 1, § 2(a).

## Sec. 21. Records to be kept by the Department

(a) The Department shall file every application for a driver's license received by it and shall maintain suitable indexes containing, in alphabetical or numerical order:

(1) All applications denied and on each thereof note the reasons for such denial;

(2) All applications granted; and

(3) The name of every licensee whose driver's license or driving privilege has been cancelled, denied, suspended or revoked and after each such name note the reasons for such action.

(b) The Department shall also file all accident reports and abstracts of court records of convictions received by it under the laws of this state and in connection therewith maintain convenient records or make suitable notations in order that an individual record of each licensee showing the convictions of such licensee and the traffic accidents in which he



has been involved shall be readily ascertainable and available for the consideration of the Department upon any application for the renewal of a driver's license and at other suitable times.

(c) The Department shall not be required to maintain records relating to drivers of motor vehicles after such records are, in the opinion of the Director, no longer necessary, except that records of convictions shall be maintained so long as they may form the basis of cancellations, suspensions, revocations or denials, or with other records of convictions may constitute a person a frequent violator of the traffic law. Records which are not required to be maintained may be destroyed with the approval of the State Auditor and the State Librarian.

(d) The Department is authorized to provide information pertaining to an individual's date of birth, current license status, and most recent address as listed on the records of the Department upon written request and the payment of a twenty-five cents (25¢) fee by a person showing a legitimate need for such information.

(e) The Department is authorized to provide a listing of the sum total of accidents and violations from the licensing records and to itemize therefrom by date and location accidents and violations occurring within the immediate past three (3) year period when requested, upon forms approved by the Department, upon payment of a fee sufficient to cover the cost involved, but in no case shall such fee be less than twenty-five cents (25¢).

(f) The Department is authorized to provide information pertaining to an individual's date of birth, current license status, most recent address, and a listing of reported traffic law violations, and motor vehicle accidents, by date and location, as listed on the records of the Department upon written request and the payment of a One Dollar (\$1.00) fee by a person showing a legitimate need for such information.

(g) No fee shall be charged for information supplied to law enforcement and other governmental agencies for official purposes.

(h) All fees and charges required by this Section shall be disposed of as provided in Section 15 of this Article. As amended Acts 1959, 56th Leg., p. 674, ch. 311, § 1.

#### **Sec. 22. Authority of Department to Suspend or Revoke a License:**

(a) When under Section 10 of this Act the Director believes the licensee to be incapable of safely operating a motor vehicle, the Director may notify said licensee of such fact and summons him to appear for hearing as provided hereinafter. Such hearing shall be had not less than ten (10) days after notification to the licensee or operator under any of the provisions of this Section, and upon charges in writing a copy of which shall be given to said operator or licensee not less than ten (10) days before said hearing. For the purpose of hearing such cases jurisdiction is vested in the mayor of the city, or judge of the police court, or a justice of the peace in the county or subdivision thereof where the operator or licensee resides. Such court may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relative books and papers. It shall be the duty of the court to set the matter for hearing upon ten (10) days written notice to the Department. Upon such hearing, in the event of an affirmative finding by the court, the officer who presides at such hearing shall report the same to the Department which shall have authority to suspend said license for a period not greater than one (1) year, provided, however, that in the event of such affirmative finding the licensee may appeal to the county court of the county wherein the hearing was held; said appeal to be tried de novo.

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

Notice by registered mail to address shown on the license of licensee shall constitute service for the purpose of this Section.

(b) The authority to suspend the license of any operator, commercial operator, or chauffeur as authorized in this Section is granted the Department upon determining after proper hearing as hereinbefore set out that the licensee:

1. Has committed an offense for which automatic suspension of license is made upon conviction;
2. Has been responsible as a driver for any accident resulting in death;
3. Is an habitual reckless or negligent driver of a motor vehicle;
4. Is an habitual violator of the traffic law.

The term "habitual violator" as used herein, shall mean any person with four or more convictions arising out of different transactions in a consecutive period of twelve (12) months, or seven (7) or more convictions arising out of different transactions within a period of twenty-four (24) months, such convictions being for moving violations of the traffic laws of the State of Texas or its political subdivisions.

5. Is incapable to drive a motor vehicle;
6. Has permitted an unlawful or fraudulent use of such license;
7. Has committed an offense in another state, which if committed in this state would be grounds for suspension or revocation;
8. Has failed or refused to submit a report of any accident in which he was involved as provided in Section 39 of this Act;
9. Has been responsible as a driver for any accident resulting in serious personal injury or serious property damage.

(c) Any licensee who is not willing and does not consent to abide by the final ruling or decision of the Department suspending said license, and whose license has been suspended under or by reason of any of the provisions set forth in subparagraphs "3," "4," "5," "8," and "9," under subsection (b) immediately above, may, within thirty (30) days after the date of receipt of notice of the suspension of such license from the Department, bring suit in the county court, or county court at law, of his residence to vacate and set aside said final ruling and decision suspending said license, which suit shall be either before the court or a jury at the election of the licensee, and said court shall, in either event, determine the issues in such cause, instead of the Department, upon a trial de novo, and shall be tried the same as if there had been no prior hearing on the matter of suspension of said license and in the same manner as a trial in the county court on appeal from the justice court, and the rights of the parties thereto shall be determined by the court upon a trial of the matters in controversy under rules governing the trial of other civil suits in the same manner and to the same extent as though the matter had been committed to the courts in the first instance and there had been no intervening administrative or executive action or decision. Under no circumstances shall the substantial evidence rule as interpreted and applied by the courts of Texas in other cases ever be used or applied to appeals prosecuted under the provisions of this Act. Any such licensee as may bring suit to vacate and set aside such ruling and decision, shall send a copy thereof, certified to by the clerk of said court, to the Department by registered mail. If any licensee who is a party to such final ruling and decision of the Department fails within thirty (30) days to institute or prosecute a suit to set such suspension aside, then said final ruling and decision of the Department shall be binding upon all parties thereto.

The Legislature hereby specifically declares that the provisions of this subsection (c) shall not be severable from the balance of this Amendatory Act, and further specifically declares that this Amendatory Act would not have been passed without the inclusion of this subsection (c). If this subsection (c), or any part thereof, is for any reason ever held by any court to be invalid, unconstitutional or inoperative in any way, such holding shall apply to this Amendatory Act, and in such event this Amendatory Act shall be null, void and of no force and effect. The provisions for appeal herein contained shall be cumulative of all other rights and provisions for appeal now or hereafter provided by law.

Pending final determination of the appeal, the license shall not be deemed suspended and any suspension order by the Department is itself suspended and is hereby set aside pending appeal except as may be hereinafter provided. The courts in which such appeals are pending shall give priority to the setting of such appeals for hearing. If such licensee has not filed suit within thirty (30) days after the date of notice by registered mail of the suspension of such license, as provided herein, then the final ruling of the Department suspending such license shall become final. It shall be the duty of the court in which said appeal is pending to advance said appeal for hearing and trial at the earliest possible date to the end that the licensee may have a final determination of his appeal under the provisions hereof. The Department shall be represented in such appeals in the county in which the hearing is held by the county attorney or other prosecuting attorney who represents the state in said county in misdemeanor criminal cases, and in his absence by the district attorney or criminal district attorney. The court shall require copies of the petition of appeal and all other pertinent documents in the case to be sent to the attorney representing the Department.

The courts, wherein any appeal under any of the provisions of this Act are pending, shall give priority to the setting of such appeals for early hearing, and said appeals shall be advanced on the docket of said courts for immediate hearing. It shall be the duty of the county attorney or other prosecuting attorney in which such appeal is pending to represent the state in such matters.

Whenever the Department has reason to believe that an operator is no longer qualified to operate safely a motor vehicle on the highways of Texas solely because of a physical or mental condition which cannot be corrected, the Department may require such operator to submit to an appropriate examination solely for the purpose of determining his physical or mental fitness to operate a motor vehicle. Any operator who is refused the issuance, renewal, or reinstatement of a license under the provisions of this Section shall have the right to appeal such decision to the courts in the same manner and under the same provisions as are elsewhere in this Act provided for appeals from suspensions of licenses.

All actions, findings, decisions or adjudications made pursuant to the provisions of this Act, by the Department, by a magistrate, or by a court of competent jurisdiction, shall be strictly limited in their effect to the purposes and objectives of this Act, and shall never be admissible as evidence for any purpose in any other proceedings or legal actions filed in any of the courts of the State of Texas. As amended Acts 1959, 56th Leg., 2nd C.S., p. 161, ch. 41, § 1.

Section 21. Acts 1959, 56th Leg., p. 674, ch. 311, § 1 added subsections (c) to (h) to section 21.

Section 22. In section 22, Acts 1959, 56th Leg., 2nd C.S., p. 161, ch. 41, § 1, inserted

the definition of "habitual violator", added item 9 to subsection (b) and added all of subsection (c).

Sections 1, 2b., and 4-6, of Acts 1959, 56th Leg., p. 1, ch. 1, as amended by Acts 1959,

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56th Leg., 3rd C.S., p. 395, ch. 16, §§ 2, 3 created a Legislative Expense Fund, transferred \$800,000 from the Operator's and Chauffeur's License Fund, \$1,500,000 from the cigarette tax revenues, and any unobligated balances in the appropriations for legislative contingent expenses made by Acts 1957, 55th Leg., p. 1, ch. 1, and Acts 1957, 55th Leg., 2nd C.S., p. 181, ch. 21, to the Legislative Expense Fund, appropriated all money in the fund for the expenses of the Fifty-Sixth Legislature, and provided for per diem and mileage reimbursement of members of the Legislature.

Section 3 of Acts 1959, 56th Leg., p. 1, ch. 1 amended art. 7047c—1, § 2(e). Section 7 contained a severability clause.

Acts 1959, 56th Leg., p. 674, ch. 311, § 2 contained a severability clause and section 3 repealed all conflicting laws and parts of laws to the extent of such conflict.

Acts 1959, 56th Leg., 2nd C.S., p. 161, ch. 41, repealed all conflicting laws and parts of laws.

Section 4 of the amendatory Acts of 1959, 56th Leg., 3rd C.S. p. 395, ch. 16 provided: "All moneys transferred into the Legislative Expense Fund by the provisions of this Act are hereby appropriated for the purposes described in Section 5 of Chapter 1, Acts, 1959, Fifty-sixth Legislature, Regular Session, as amended."

Legislative expense fund, transfer of moneys from cigarette tax revenues, see note under art. 7047c—1, § 2.

## CHAPTER ONE A—TRAFFIC REGULATIONS

### Art. 6701d. Uniform Act Regulating Traffic on Highways

#### Stopping, standing or parking outside of business or residence districts; mail carriers

Sec. 93. (a) Upon any highway outside of a business or residential district, no person shall stop, park, or leave standing any vehicle, whether attended or unattended, upon the paved or main-traveled part of the highway when it is practical to stop, park, or so leave vehicle off such part of said highway, but in every event, an unobstructed width of the highway opposite a standing vehicle shall be left for the free passage of other vehicles and a clear view of such stopped vehicle shall be available from a distance of two hundred (200) feet in each direction upon such highway.

(b) This Section shall not apply to the driver of any vehicle which is disabled while on the paved or main-traveled portion of a highway in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving such disabled vehicle in such position.

(c) Any person employed as a mail carrier or letter carrier by the United States Government or any person under contract to deliver mail or letters for the United States Government, may stop, park, or leave standing any vehicle, whether attended or unattended, upon the paved or main-traveled part of the highway when it is impractical to stop, park, or so leave vehicle off such part of said highway, when within the scope of his employment, but in every event, an unobstructed width of the highway opposite a standing vehicle shall be left for the free passage of other vehicles and a clear view of such stopped vehicle shall be available from a distance of at least two hundred (200) feet in each direction upon such highway. As amended Acts 1959, 56th Leg., p. 664, ch. 307, § 1.

#### Lamps on parked vehicles

Sec. 121. Whenever a vehicle is parked or stopped upon a roadway or shoulder adjacent thereto, whether attended or unattended during the times mentioned in Section 109, such vehicle shall be equipped with one or more lamps which shall exhibit a white or amber light on the roadway side visible from a distance of five hundred (500) feet to the front of such vehicle and a red light visible from a distance of five hundred (500) feet

to the rear, except that local authorities may provide by ordinance or resolution that no lights be displayed upon any such vehicle when stopped or parked in accordance with local parking regulations upon a highway where there is sufficient light to reveal any person within a distance of five hundred (500) feet upon such highway. Any lighted head lamps upon a parked vehicle shall be depressed or dimmed. As amended Acts 1959, 56th Leg., p. 232, ch. 135, § 1.

#### Additional Lighting Equipment

Sec. 125. (a) Any motor vehicle may be equipped with not more than two (2) side cowl or fender lamps which shall emit an amber or white light without glare.

(b) Any motor vehicle may be equipped with not more than one (1) running board courtesy lamp on each side thereof which shall emit a white or amber light without glare.

(c) Any motor vehicle may be equipped with not more than two (2) back-up lamps either separately or in combination with other lamps, but any such back-up lamp shall not be lighted when the motor vehicle is in forward motion.

(d) Any vehicle may be equipped with lamps which may be used for the purpose of warning the operators of other vehicles of the presence of a vehicular traffic hazard requiring the exercise of unusual care in approaching, overtaking or passing, and when so equipped may display such warning in addition to any other warning signals required by this Act. The lamps used to display such warning to the front shall be mounted at the same level and as widely spaced laterally as practicable and shall display simultaneously flashing white or amber lights, or any shade of color between white and amber. The lamps used to display such warning to the rear shall be mounted at the same level and as widely spaced laterally as practicable, and shall show simultaneously flashing amber or red lights, or any shade of color between amber and red. These warning lights shall be visible from a distance of not less than 500 feet under normal atmospheric conditions at night.

(e) Any commercial vehicle 80 inches or more in overall width may be equipped with not more than three identification lamps showing to the front which shall emit an amber light without glare and not more than three identification lamps showing to the rear which shall emit a red light without glare. Such lamps shall be placed in a row and may be mounted either horizontally or vertically. As amended Acts 1959, 56th Leg., p. 839, ch. 378, § 1.

#### Special Restrictions on Lamps

Sec. 131. (a) Any lighted lamp or illuminating device upon a motor vehicle other than head lamps, spot lamps, auxiliary lamps, or flashing turn signals, emergency vehicle warning lamps, and school bus warning lamps, which projects a beam of light of an intensity greater than three hundred (300) candlepower shall be so directed that no part of the high intensity portion of the beam will strike the level of the roadway on which the vehicle stands at a distance of more than seventy-five (75) feet from the vehicle.

(b) No person shall drive or move any vehicle or equipment upon any highway with any lamp or device thereon displaying a red light visible from directly in front of the center thereof. This Section shall not apply to any vehicle upon which a red light visible from the front is expressly authorized or required by law.

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

(c) Flashing lights are prohibited except on an authorized emergency vehicle, school bus, snow-removal equipment, or on any vehicle as a means for indicating a right or left turn, or as authorized in Section 125 hereof. As amended Acts 1959, 56th Leg., p. 839, ch. 378, § 2.

Safety guards or flaps behind rear wheels of tractors, trucks, etc.

Sec. 139a. It shall be unlawful to operate any road tractor, truck, truck-tractor in combination with a semi-trailer, trailer or semi-trailer in combination with a towing vehicle, having four (4) or more tires on the rearmost axle of such vehicle or if in combination the rearmost axle of such combination, upon highways in this State, unless the rearmost axle of such road tractor, truck, truck-tractor in combination with a semi-trailer, trailer, or semi-trailer in combination with a towing vehicle, be equipped with safety guards or flaps of a type of material and construction as prescribed by the Department, located and suspended behind the rearmost wheels of such vehicle or if in combination behind the rearmost wheels of such combination, to within eight (8) inches of the surface of the highway. Provided, however, pole trailers, truck-tractors operated alone and without being in combination with a semi-trailer, and all trucks operated on private property, shall not come under the provisions of this Section. As amended Acts 1959, 56th Leg., p. 93, ch. 47, § 1.

Section 93. The 1959 amendment substituted "practical" for "possible" in paragraph (a) and added paragraph (c) relating to mail carriers.

Section 121. The 1959 amendment permitted the exhibition of amber lights to the front of parked vehicles.

Section 125. The 1959 amendment substituted "not more than two (2) back-up lamps" for "a back-up lamp" and added paragraphs (d) and (e) relating to warning lamps and identification lamps.

The 1959 amendment added the following exception to paragraph (c): "or as authorized in Section 125 hereof".

Prior to 1959, this section provided: "It shall be unlawful to operate any road tractor, truck, truck tractor, trailer or semi-trailer, having four (4) or more tires on the rear axle thereof upon any highway in this

State when the highway upon which the same is operated is wet unless such road tractor, truck, truck tractor, trailer or semitrailer be equipped with safety guards or flaps of a type of material and construction prescribed by the department, located and suspended behind the rear wheels of such vehicle to within six (6) inches of the surface of the highway so as to prevent mud and road-slush from the tires of such vehicle being transmitted to the windshield of any following motor vehicle following at a distance of not less than one hundred (100) feet. Provided, however, that 'pole trailers' shall not come under the provisions of this act."

Acts 1959, 56th Leg., p. 93, ch. 47, § 2; p. 232, ch. 135, § 2; p. 839, § 378, § 3 repealed all conflicting laws and parts of laws.

## CHAPTER FIVE—BRIDGES AND FERRIES

### 1. BRIDGES

Art. 6795b. Causeways, bridges, and tunnels authorized in Gulf Coast counties of 50,000 or more

Construction and operation authorized; cost and expenses

Section 1. Any county in the State of Texas which borders on the Gulf of Mexico and which has a population of twenty thousand (20,000) or more, according to the last Federal Census, preceding the authorization of bonds hereunder, acting through its Commissioners Court, is hereby authorized and empowered to construct, acquire, improve, operate, and maintain a causeway, bridge, tunnel, or any combination of such facilities, including all necessary approaches, fixtures, accessories, and equipment

(all of which are hereinafter referred to as "the project") from one point in said county to another, in, over, through, or under the waters of the Gulf of Mexico or any bay or inlet opening thereinto, and to issue its revenue bonds payable solely from the revenues to be derived from the operation thereof, to pay the cost of such construction, acquisition, or improvement. The cost of the project shall be considered to include the cost of construction, the cost of all property, real, personal, and mixed, and all appurtenances, easements, contracts, franchises, pavements, and properties of every nature, used or useful in connection with the construction, acquisition, improvement, operation, and maintenance of the project; shall include the payment of the cost of condemning any such property, including both the payment of the award and the payment of the court costs and attorneys fees; shall include the payment of all legal, fiscal, and engineering expenses incurred in connection with the acquisition and construction of the project and the making of preliminary surveys and investigations and the authorization and issuance of the revenue bonds; and shall include the payment of interest on the bonds prior to and during the period occupied by the construction of the project and for one year thereafter. If the Commissioners Court shall consider it desirable to acquire, through purchase or lease, existing ferry properties for the purpose of operating such properties during the period of construction, over the route to be traversed by the project, such properties may be so acquired and the cost thereof paid from the proceeds of the bonds. Any preliminary expenses paid from county funds shall be repaid to such funds from the proceeds of the bonds when available, and all engineering and fiscal contracts and agreements for such projects heretofore entered into are hereby validated and confirmed; provided, however, that nothing in this Act shall authorize the construction of a bridge over and across any ship channel or waterway with a maintained depth of twenty (20) feet or more. As amended Acts 1959, 56th Leg., p. 25, ch. 15, § 1.

In section 1, the 1959 amendment substituted "twenty thousand (20,000)" for "fifty thousand (50,000)"

## TITLE 117—SALARIES

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| <p>Art.<br/>6819a—12a. Salary of district court judge in 109th Judicial District [New].</p> <p>6819a—19. Judges of district and criminal district courts in counties of 300,000 or more having 12 or more civil district courts and 3 or more criminal district courts [New].</p> <p>6819a—20. Additional compensation of district court judge of 16th judicial district [New].</p> <p>6819a—21. First judicial District; additional compensation for district judge [New].</p> <p>6819a—22. District judges of 53rd, 98th and 126th judicial districts and Criminal District Court of Travis County; additional compensation [New].</p> | <p>Art.<br/>6819a—23. Additional compensation of district court judges of 49th Judicial District [New].</p> <p>6819a—24. Additional compensation of district court judges of Pecos, Upton, Crockett and Sutton Counties [New].</p> <p>6819a—25. Additional compensation of judges of district and criminal district courts in counties with population of 600,000 or more [New].</p> <p>6822a. State employees injured or killed in performance of governmental functions or while exposed to unavoidable dangers; payment of expenses [New].</p> <p>6823a. Travel Regulations Act of 1959 [New].</p> |
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## Art. 6813. Enumeration

Acts 1959, 56th Leg., p. 144, ch. 8 provides as follows:

*"Section 1. The salaries of all state officers and all state employees, except the salaries of the District Judges and other compensation of District Judges, shall be for the period beginning September 1, 1959 and ending August 31, 1961, in such sums or amounts as may be provided for by the Legislature in the general appropriations Act. It is specifically declared to be one of the intents hereof that the Legislature shall also fix the amount of supplemental salaries hereafter, out of court fees and receipts, to be paid to the clerks and other employees of the Courts of Civil Appeals, the Supreme Court and the Court of Criminal Appeals.*

*"Sec. 2. All laws and parts of laws fixing the salaries of all state officers and employees, except the salaries of the District Judges and other compensation of District Judges, are hereby specifically suspended insofar as they are in conflict with this Act. It is specifically declared to be one of the intents hereof that any and all laws authorizing payment of supplemental salaries from court receipts and fees to clerks and other employees of the Courts of Civil Appeals, the Supreme Court, and the Court of Criminal Appeals, are suspended insofar as they are in conflict with this Act."*

## Art. 6819a—12a. Salary of district court judge in 109th Judicial District

In the 109th Judicial District, the District Judge, may receive annually, payable in monthly installments, a salary to be fixed by the Commissioners Court of each county, to be paid by said county out of the General Fund thereof, as compensation for all judicial and administrative services now rendered by said Judge, and any additional judicial or administrative services hereafter to be assigned to said Judge, in addition to all salaries paid or hereafter to be paid to said Judge by



the State of Texas, out of state revenues; provided, however, that the salary herein authorized to be paid by any County Commissioners Court to any Judge shall not exceed the sum of One Thousand, Two Hundred Dollars (\$1,200.00) per annum. Acts 1959, 56th Leg., 3rd C.S., p. 379, ch. 4, § 1.

Section 2 of the Act of 1959 contained a severability clause and section 3 provided: "All laws or part of laws in conflict with the provisions of this Act, are hereby repealed."

Art. 6819a—19. Judges of district and criminal district courts in counties of 800,000 or more having 12 or more civil district courts and 3 or more criminal district courts

In any county in this state having a population of eight hundred thousand (800,000) or more, according to the last preceding federal census, and having twelve (12) or more Civil District Courts and three (3) or more Criminal District Courts, the Judges of the several District and Criminal District Courts of such counties shall receive in addition to the salary paid by the state to them and to other District Judges of this state, the sum of Six Thousand Dollars (\$6,000.00) annually, to be paid in equal monthly installments out of the General Fund or Officers Salary Fund of such counties. The Commissioners Court shall make proper budget provisions for the payment thereof. Any District Judge of the state who may be assigned to sit for the Judge of any District Court in such counties under the provisions of Article 200-A, Revised Civil Statutes, may, while so serving, receive in addition to his necessary expenses, additional compensation from county funds in an amount not to exceed the difference between the pay of such visiting judge from all sources and that pay received from all sources by District Judges in the counties affected by the provisions of this Act, such amount to be paid by the county upon approval of the presiding judge in which said court is located. Acts 1959, 56th Leg., p. 111, ch. 60, § 1.

Section 2 of the Act of 1959 provided that this Act shall be cumulative of existing laws and any laws in conflict herewith are repealed to the extent of such conflict only. Additional compensation of judges of district and criminal district courts in counties with population of 600,000 or more, see art. 6819a—25.

Art. 6819a—20. Additional compensation of district court judge of 16th Judicial District

Section 1. In addition to the compensation provided by law and paid by the State, the Commissioners Court of Denton County is hereby authorized to pay the District Judge of the 16th Judicial District for services rendered to Denton County and for administrative duties, a reasonable sum not to exceed Two Thousand Four Hundred Dollars (\$2,400) per annum; and in addition to the compensation provided by law and paid by the State, the Commissioners Court of Cooke County is hereby authorized to pay the said District Judge of the 16th Judicial District for services rendered to Cooke County and for administrative duties, a reasonable sum not to exceed One Thousand Two Hundred Dollars (\$1,200) per annum.

Sec. 2. The compensation provided for in Section 1 shall be in addition to all other compensation paid or authorized to be paid the District Judge of the 16th Judicial District. Acts 1959, 56th Leg., p. 121, ch. 69.

Section 3 of the Act of 1959 contained a severability clause. Title of Act: An Act authorizing the Commissioners Courts of Denton and Cooke Counties to pay the District Judge of the 16th Judicial District compensation in addition to the compensation paid by the State; making other provisions relative thereto; providing a severability clause; and declaring an emergency. Acts 1959, Leg., p. 121, ch. 69.

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

**Art. 6819a—21. First Judicial District; additional compensation for district judge**

Section 1. In addition to the compensation provided by law and paid by the State of Texas, the Commissioners Court of Newton, Sabine, Jasper and San Augustine Counties, Texas, is hereby authorized to pay the District Judge of the 1st Judicial District for services rendered to Newton, Sabine, Jasper and San Augustine Counties, and for performing administrative duties, a reasonable sum not to exceed Three Thousand Dollars (\$3,000.00) per annum, provided, however, that such sum shall be apportioned by the aforesaid four counties.

Sec. 2. The compensation provided for in Section 1 shall be in addition to all other compensation paid or authorized to be paid the District Judge of the 1st Judicial District. Acts 1959, 56th Leg., p. 129, ch. 75.

Section 3 of the Act of 1959 contained a severability clause.

**Title of Act:**

An Act authorizing the Commissioners Court of Newton, Sabine, Jasper and San Augustine Counties, Texas, to pay the Dis-

trict Judge of the 1st Judicial District compensation in addition to the compensation paid by the State of Texas; making other provisions relating thereto; providing for a severability clause; and declaring an emergency. Acts 1959, 56th Leg., p. 129, ch. 75.

**Art. 6819a—22. District judges of 53rd, 98th and 126th judicial districts and Criminal District Court of Travis County; additional compensation**

Section 1. In addition to the compensation provided by law and paid by the State of Texas, the Commissioners Court of Travis County, Texas is hereby authorized to pay the District Judges of the 53rd Judicial District, 98th Judicial District, 126th Judicial District, and the Criminal District Court of Travis County, respectively, for services rendered to Travis County, and for performing administrative duties, a reasonable sum not to exceed Six Thousand Dollars (\$6,000.00) per annum to each of the judges of said courts.

Sec. 2. The compensation provided for in Section 1 shall be in addition to all other compensation paid or authorized to be paid to the Judges of the 53rd Judicial District, 98th Judicial District, 126th Judicial District, and the Criminal District Court of Travis County, respectively.

Sec. 3. Any district judge of the state who may be assigned to sit for the Judge of the 53rd Judicial District, the 98th Judicial District, the 126th Judicial District or the Criminal District Court of Travis County, under the provisions of Article 200a, Revised Civil Statutes, may, while so serving, receive in addition to his necessary expenses, additional compensation from county funds in an amount to be set by the Commissioners Court not to exceed the difference between the pay of such visiting judge from all sources and that pay received from all sources by the District Judges in Travis County, such amount to be paid by the county upon approval of the presiding Judge of the Administrative Judicial District in which said court is located. Acts 1959, 56th Leg., p. 141, ch. 83.

Section 4 of the Act of 1959 contained a severability clause.

Assignment of judges, administrative judicial districts, see art. 200a.

**Art. 6819a—23. Additional compensation of district court judges of 49th Judicial District**

Section 1. In addition to the compensation provided by law and paid by the State, the Commissioners Court of Zapata County is hereby authorized to pay the District Judge of the 49th Judicial District, for additional

services rendered to Zapata County as Judge of the Juvenile Court in such County and for performing administrative duties, a reasonable sum not to exceed Two Thousand, Four Hundred Dollars (\$2,400) per annum.

Sec. 2. The compensation provided for in Section 1 shall be in addition to all other compensation now paid or authorized to be paid the District Judge of the 49th Judicial District. Acts 1959, 56th Leg., p. 481, ch. 210.

Title of Act:

An Act authorizing the Commissioners Court of Zapata County to supplement the salary of the District Judge of the 49th Ju-

dicial District of Texas; making other provisions relating thereto; and declaring an emergency. Acts 1959, 56th Leg., p. 481, ch. 210.

Art. 6819a—24. Additional compensation of district court judges of Pecos, Upton, Crockett and Sutton Counties

In addition to the compensation provided by law and paid by the State, the Commissioners Courts of Pecos, Upton, Crockett, and Sutton Counties may pay, and the District Judge, having jurisdiction in such County may receive annually, payable in monthly installments, a salary to be fixed by the Commissioners Court of such County out of the general fund thereof, as compensation for all judicial and administrative services rendered by said judge, or judges, in addition to all salaries paid or hereafter to be paid to said judge, or judges, by the State of Texas, out of State revenues; provided, however, that the salary herein authorized to be paid by any County Commissioners Court to the judge shall not exceed the sum of Two Thousand, Four Hundred Dollars (\$2,400) per annum; and provided that the total remuneration to be received by said judge under the provisions hereof shall not exceed the sum of Eight Thousand Dollars (\$8,000) per annum. Acts 1959, 56th Leg., 2nd C.S., p. 148, ch. 33, § 1.

Title of Act:

An Act authorizing the Commissioners Court of Pecos, Upton, Crockett, and Sutton Counties to pay the District Judge having jurisdiction therein compensation in

addition to the compensation paid by the State of Texas; repealing all laws in conflict; and declaring an emergency. Acts 1959, 56th Leg., 2nd C.S., p. 148, ch. 33.

Art. 6819a—25. Additional compensation of judges of district and criminal district courts in counties with population of 600,000 or more

In any County in this State which now has, or may hereafter have, a population of six hundred thousand (600,000) or more, according to the last preceding Federal Census, and having eight (8) or more Civil District Courts, three (3) Criminal District Courts, and at least one (1) Court of Domestic Relations and at least one (1) Juvenile Court, the Judges of the several District and Criminal District Courts of such Counties shall receive, in addition to the salary paid by the State to them and to other District Judges of this State, a sum of money, to be approved by the Commissioners Court, of not less than Four Thousand Dollars (\$4,000) nor more than Six Thousand Dollars (\$6,000) annually to be paid in equal monthly installments out of the General Fund or Officers Salary Fund of such Counties. The Commissioners Court may make proper budget provision for the payment thereof. Any District Judge of the State who may be assigned to sit for the Judge of any District Court in such Counties under the provisions of Article 200—A, Revised Civil Statutes, may, while so serving, receive in addition to his necessary expenses, additional compensation from County Funds in an amount not to exceed the difference between the pay of such visiting Judge from all sources and that pay received from all sources by District Judges in the Counties affected by the

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

provisions of this Act, such amount to be paid by the County upon approval of the presiding Judge in which said Court is located. Acts 1959, 56th Leg., 2nd C.S., p. 149, ch. 34, § 1.

Section 2 of Acts 1959, 56th Leg., 2nd C. S., p. 149, ch. 34 provided: "This Act shall be cumulative of existing laws; and any laws in conflict herewith are repealed to the extent of such conflict only, but shall not affect or change in any manner Senate Bill

No. 269, passed by Fifty-sixth Legislature, Regular Session [Article 6819a—191.]"

Additional compensation of judges of district and criminal district courts in counties with population of 800,000 or more, see art. 6819a—19.

**Art. 6822a. State employees injured or killed in performance of governmental functions or while exposed to unavoidable dangers; payment of expenses**

Section 1. The Legislature is hereby authorized to appropriate public funds for the purpose of paying for drugs and medical, hospital, laboratory, and funeral expenses of state employees injured or killed while engaged in performance of a necessary governmental function assigned to the employee, or where the duties of such employee require the employee to expose himself to unavoidable dangers peculiar to the performance of a necessary governmental function.

Sec. 2. Agencies of the state are hereby authorized to expend appropriated funds for the purpose of paying for drugs and medical, hospital, laboratory, and funeral expenses to those state employees under their jurisdiction and control only when such employees are engaged in the activities described in Section 1 of this Act, and only to the extent authorized by appropriations made by the Legislature.

Sec. 3. The payment of the expenses provided for in Section 1 of this Act is authorized to be made in addition to other prerequisites of employment now authorized by law. Acts 1959, 56th Leg., p. 838, ch. 377.

Sick leave and hospitalization insurance for county employees, see arts. 2372h—1, 2372h—2.

Workmen's compensation insurance for state employees, see arts. 8309b, § 1; 8309d, § 1.

**Art. 6823a. Travel Regulations Act of 1959**

#### Short title

Section 1. This Act is the "Travel Regulations Act of 1959."

#### Application of act

Sec. 2. The provisions of this Act shall apply to all officers, heads of state agencies, and state employees. The provisions of this Act shall not apply to judges and other judicial employees paid by the state, counties or other political subdivisions pursuant to law. Heads of state agencies shall mean elected state officials, excluding members of the Legislature who shall receive travel reimbursement as provided by the Constitution, appointed state officials, appointed state officials whose appointment is subject to Senate confirmation, directors of legislative interim committees or boards, heads of state hospitals and special schools, and heads of state institutions of higher education.

#### Basis of reimbursement; per diem allowance; rate; computation

Sec. 3. a. Reimbursement from funds appropriated by the Legislature for traveling and other necessary expenses incurred by the various officials, heads of state agencies, and employees of the state in the active discharge of their duties shall be on the basis of either a per

diem or actual expenses as specifically fixed and appropriated by the Legislature in General Appropriation Acts. A per diem allowance shall mean a flat daily rate payment in lieu of actual expenses incurred for meals and lodging and as such shall be legally construed as additional compensation for official travel purposes only.

b. The rate of per diem and transportation allowance and method of computing those rates shall be those set forth in General Appropriation Acts providing for the expenses of the state government from year to year.

**Acceptance of money from corporation or person under  
examination; violation**

Sec. 4. Unless otherwise provided by law, officers and employees traveling to the performance of their official duties shall not accept any sums of money for wages or expenses, from any corporation, firm, or person who may be or is being audited, examined, inspected or investigated, and must receive their traveling expenses from the amounts appropriated in the Appropriation Acts. The Comptroller is hereby prohibited from paying the salary of any employee of the state who violates these provisions.

**Reimbursement for travel outside United States; approval;  
blanket authority**

Sec. 5. Any travel connected with official business of the state for which reimbursement for travel expenses incurred outside the continental limits of the United States is claimed must have the advance written approval of the Governor. Blanket authority by the Governor may be given the Department of Public Safety to law enforcement personnel entering Mexico to apprehend criminals.

**Rules and regulations; standard expense account forms; reimbursement  
for travel in private conveyance; overpayment**

Sec. 6. a. The Comptroller of Public Accounts is to promulgate rules and regulations to facilitate the execution of the travel regulations, as defined in this Act or as may hereafter be contained in General Appropriations Acts, and shall, with the concurrence of the State Auditor, prescribe the form on which travel expenses are to be submitted. The Comptroller shall approve claims for travel expense and issue warrants on basis of approved claims.

Such rules and regulations as are prescribed by the Comptroller shall be subject to final approval by the Attorney General. After such approval has been given, official copies of the rules and regulations, including administrative policies and/or interpretations of these rules and regulations, shall be filed with the Secretary of State.

b. Standard expense account forms shall be used by all state agencies in preparing the expense accounts for traveling state employees. Such forms shall contain information stating (1) the point of origin and the town, place or point of destination of each trip and the reimbursable mileage travelled between each point, town, or place. This provision shall also apply to intra-city mileage; (2) the actual period of time the employee is away from his designated headquarters entitling him to travel expenses; and (3) a brief statement which clearly shows the purpose of the trip and the character of official business performed.

c. In determining transportation reimbursements for travel by private conveyance, the Comptroller shall base reimbursement on mile-

age along the shortest practical route between point of origin and the destination via intermediate points at which official state business is conducted and other necessary mileage at points where official state business is conducted. The most recent annual official highway map, as published and released by the State Highway Department shall be used by the Comptroller in computing the amounts of reimbursement for transportation by personal car within the state. In computing distances in excess of fifty miles, officially designated state and federal highways shall be used in determining the shortest practical route between the point of origin and the point of destination via intermediate points at which official state business is conducted and other necessary mileage at points where official state business is conducted. In computing distances of fifty miles or less, state and federal highways and Farm-to-Market roads shall be used by the Comptroller in determining the shortest practical route between the point of origin and the point of destination via intermediate points at which official state business is conducted and other necessary mileage at points where official state business is conducted.

d. When two or more employees travel in a single private conveyance, only one shall receive a transportation allowance, but this provision shall not preclude each traveler from receiving a per diem allowance.

e. When two, three, or four officials or employees of the same state agency with the same itinerary on the same dates are required to travel on the same official state business for which travel reimbursement for mileage in a personal car is claimed, mileage reimbursement will be claimed and allowed for only one of the employees except as provided hereafter. To the extent to mileage reimbursement claimed, the Comptroller shall consider such travel claims as multiple claims and may pay only one such claim. If more than four employees attend such meeting or conference in more than one car, full mileage reimbursement shall be allowed for one car for each four employees and for any fraction in excess of a multiple of four employees. If, in any instance, it is not feasible for these officials or employees to travel in the same car, then prior official approval from the head of the state department or agency shall be obtained and shall be considered as authorization and the basis for reimbursement for travel for each person authorized to use his personal car in such travel.

f. Should an officer or employee of the state receive an overpayment for travel expenses from money appropriated in the Appropriations Acts, he is to reimburse the state for such overpayment.

#### **Double travel expense payments; reimbursement by non-state agency**

Sec. 7. Double travel expense payments to state officials or employees are prohibited. When an employee engages in travel for which he is to be compensated by a non-state agency, he shall not receive any reimbursement for such travel from authorized amounts in the General Appropriation Acts.

#### **Local transportation allowance; limits**

Sec. 8. An employee whose duties customarily require travel within his designated headquarters may be authorized a local transportation allowance for this travel. Such allowance, however, shall never exceed the transportation allowance for use of a privately owned automobile as set by the Legislature in the General Appropriations Acts.

#### Disallowance of per diem reimbursement

Sec. 9. Neither a per diem allowance nor partial per diem allowance as set out in the General Appropriations Acts shall be allowed for the period of time on those days when an employee is:

- (1) At his official designated headquarters.
- (2) Absent from post of duty for personal reasons.
- (3) Absent from post of duty for any reason not connected with duties of the agency by which the employee is employed.
- (4) Away from designated headquarters for a period of less than six consecutive hours.

When an employee leaves his post of duty for any reason not connected with the duties of the agency by which such employee is employed, or for personal reasons, the employee shall clearly show he is absent for personal reasons on the expense account and will also show the hour and date of departure from post of duty and the hour and date he returned to said post of duty.

#### Public conveyances; courtesy cards

Sec. 10. The provisions of this Act shall not preclude reimbursement of claims by officials or employees for use of public conveyances. Transportation is authorized by courtesy cards for air, rail and bus lines.

#### Exclusions

Sec. 11. None of the provisions of this Act shall apply to reimbursement for travel expenses incurred by officials or employees of athletic departments of the institutions of higher education, to reimbursement for travel expenses to officials or employees of institutions of higher education from gifts or bequests, or to reimbursement for travel expenses of officials or employees when expenses for such travel are paid or reimbursed to the institutions of higher education under provisions of contracts between the institutions and the Federal Government or other contracting agencies. The governing boards of the respective institutions of higher education shall make such necessary rules and regulations as may be deemed advisable for the administration and control of such travel. Acts 1959, 56th Leg., p. 523, ch. 231.

Section 12 of the Act of 1959, contained a severability clause, section 3 repealed all conflicting laws and parts of laws and section 14 made the Act effective Sept. 1, 1959.

Expense accounts of officers compensated on fee basis, see art. 3899.

#### Traveling expenses,

Commissioners court members, see arts. 2350(6), 2350(7), 2350n, 2350o;  
 Constables, see arts. 6889b to 6889d;  
 County superintendent of public instruction, see arts. 2700 to 2700d;  
 District court reporters, see arts. 2326a, 2326d—1.

## TITLE 121—STOCK LAWS

## CHAPTER SIX—STOCK RUNNING AT LARGE

## Art. 6954. [7235] Petition

Upon the written petition of thirty-five (35) freeholders of any of the following counties: Anderson, Angelina, Aransas, Archer, Armstrong, Atascosa, Austin, Bandera, Bastrop, Baylor, Bee, Bell, Bexar, Blanco, Borden, Bosque, Bowie, Brazoria, Brazos, Brewster, Briscoe, Brooks, Brown, Burleson, Burnet, Caldwell, Calhoun, Callahan, Cameron, Camp, Carson, Cass, Castro, Chambers, Cherokee, Childress, Clay, Cochran, Coleman, Collin, Collingsworth, Colorado, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Dallam, Dallas, Dawson, Deaf Smith, Delta, Denton, DeWitt, Dickens, Dimmit, Donley, Duval, Eastland, Ector, Edwards, Ellis, El Paso, Erath, Falls, Fannin, Fayette, Fisher, Floyd, Foard, Fort Bend, Franklin, Freestone, Frio, Gaines, Galveston, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gray, Grayson, Gregg, Grimes, Guadalupe, Hale, Hall, Hamilton, Hansford, Hardeman, Harris, Harrison, Hartley, Haskell, Hays, Henderson, Hidalgo, Hill, Hockley, Hood, Hopkins, Houston, Howard, Hudspeth, Hunt, Hutchinson, Irion, Jack, Jackson, Jeff Davis, Jefferson, Jim Hogg, Jim Wells, Johnson, Jones, Karnes, Kaufman, Kendall, Kent, Kerr, Kimble, King, Kleberg, Knox, Lamar, Lamb, Lampasas, Lavaca, Lee, Leon, Liberty, Limestone, Lipscomb, Live Oak, Llano, Lubbock, Lynn, Madison, Marion, Martin, Mason, Matagorda, Maverick, McCulloch, McLennan, McMullen, Medina, Menard, Midland, Milam, Mills, Mitchell, Montague, Montgomery, Moore, Morris, Nacogdoches, Navarro, Nolan, Nueces, Ochiltree, Oldham, Orange, Palo Pinto, Panola, Parker, Parmer, Pecos, Polk, Potter, Rains, Randall, Reagan, Real, Red River, Reeves, Refugio, Robertson, Rockwall, Runnels, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, San Saba, Scurry, Shackelford, Shelby, Sherman, Smith, Somervell, Starr, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terrell, Throckmorton, Titus, Tom Green, Travis, Upshur, Uvalde, Val Verde, Van Zandt, Victoria, Walker, Waller, Ward, Washington, Webb, Wharton, Wheeler, Wichita, Wilbarger, Willacy, Williamson, Wilson, Winkler, Wise, Wood, Young, Zapata, and Zavala; or upon the petition of fifteen (15) freeholders of any such subdivision of any county of this State as may be described in the petition, and defined by the Commissioners Court of the county in which said subdivision is situated, the Commissioners Court of said county shall order an election to be held in such county or such subdivision of a county as may be described in the petition and defined by the Commissioners Court on the day named in the order for the purpose of enabling the freeholders of such county or subdivision of a county as may be described in the petition and defined by the Commissioners Court to determine whether cattle shall be permitted to run at large in such county or such subdivision of a county as may be described in the petition and defined by the Commissioners Court. As amended Acts 1959, 56th Leg., p. 943, ch. 438, § 1.

This section was made applicable to Wil-lacy County in 1959.



## CHAPTER EIGHT—LIVESTOCK SANITARY COMMISSION

## Art. 7009a. Change of name

Section 1. The name of the Livestock Sanitary Commission of Texas is hereby changed to the Texas Animal Health Commission.

Sec. 2. Wherever the name Livestock Sanitary Commission, or any reference thereto, appears in the statutes of this State, such name and such reference shall hereafter mean and apply to the Texas Animal Health Commission, in order to conform to the new name as provided in Section 1 hereof.

Sec. 3. All laws relating to livestock disease control and all regulations, quarantines and orders heretofore issued by the Livestock Sanitary Commission of Texas shall not be affected, and all appropriations and benefits shall be available to and apply to the Texas Animal Health Commission. Acts 1959, 56th Leg., p. 430, ch. 192.

## TITLE 122—TAXATION

## CHAPTER ONE—LEVY OF TAXES AND OCCUPATION TAXES

Art. 7046. Repealed. Acts 1959, 56th Leg., 3rd C.S. p. 187, ch. 1, § 7.  
Eff. Sept. 1, 1959

See, now, Title 122A, Taxation—General,  
art. 2.01.

Art. 7047. 7355, 5049 Occupation taxes

*This article as amended, except subdivision 46, is repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959.*

See, now, Title 122A, Taxation—General,  
arts. 5.01, 5.02, 18.01–18.04, 19.01, 19.03.

Arts. 7047a—2 to 7047a—4

*This article as amended is repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959.*

See, now, Title 122A, Taxation—General,  
arts. 13.01 to 13.02.

Art. 7047a—5. Repealed. Acts 1959, 56th Leg., 3rd C.S. p. 187, ch. 1,  
§ 7. Eff. Sept. 1, 1959

See, now, Title 122A, Taxation—General,  
art. 13.04.

Arts. 7047a—6 to 7047a—16

*This article as amended is repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959.*

See, now, Title 122A, Taxation—General,  
arts. 13.05 to 13.16.

Arts. 7047a—17, 7047a—18. Repealed. Acts 1959, 56th Leg., 3rd C.S.  
p. 187, ch. 1, § 7. Eff. Sept. 1, 1959

Art. 7047a—19. Admission taxes; records and reports; apportionment;  
offenses and penalties

*This article as amended is repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959.*

(1) Every person, firm, association of persons, or corporation owning or operating any place of amusement which charges a price or fee for admission, including exhibitions in theaters, motion picture theaters, opera halls, and including horse racing, dog racing, motorcycle racing, automobile racing, and like contests and exhibitions, and including dance halls, night clubs, skating rinks, and any and all other places of amusements not prohibited by law, shall file with the State Comptroller a quarterly report on the twenty-fifth day of January, April, July and October for the quarter ending on the last day of the preceding month; said report shall

show the gross amount received and the price or fee for admission; provided, however, that the report herein required shall be made upon the day following each amusement, exhibition, entertainment or contest, when such amusement, exhibition, entertainment or contest is not held continuously at a regular fixed place or establishment; and further provided, however, no tax shall be levied under this Section on any admission collected for dances, moving pictures, operas, plays and musical entertainments, all the proceeds of which inure exclusively to the benefit of state, religious, educational, veterans' or charitable institutions, societies, or organizations, if no part of the net earnings thereof inures to the benefit of any private stockholder or individual or for any type of exhibition or amusement conducted by and for which all of the net proceeds inure to the benefit of a nonprofit corporation organized and chartered under the laws of the State of Texas, for the purpose of encouraging agriculture by the maintenance of public fairs and exhibitions of livestock; and provided further, that entertainments such as motion pictures, operas, plays and like amusements held at a fixed and regular established motion picture theater where the admission charge is less than One Dollar and One Cent (\$1.01) per person, and where no tax is due hereunder, shall be relieved from the filing of a report and the payment of a tax levied under the provisions of this Section. Said person, firm, association of persons, or corporation, at the time of making such report shall pay to the Treasurer of this state a tax in rates and amounts as hereinafter provided. As amended Acts 1959, 56th Leg., p. 762, ch. 344, § 1.

Emergency. Effective May 30, 1959.

See, now, Title 122A, Taxation—General, arts. 21.01 to 21.04.

#### Art. 7047b. Tax on producers of natural gas

*This article as amended is repealed by Acts 1959, 56th Leg., 3rd C.S. p. 187, ch. 1, § 7. Eff. Sept. 1, 1959.*

See, now, Title 122A, Taxation—General, arts. 3.01 to 3.10.

#### Art. 7047c—1. Cigarette Tax

*This article as amended is repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959.*

##### Definitions

Sec. 1. (a) "Cigarette" shall mean and include any roll for smoking made wholly or in part of tobacco irrespective of size or shape and irrespective of tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any other material other than tobacco. Provided the definition herein shall not be construed to include cigars.

By "cigar," as used herein, shall mean any roll of fermented tobacco wrapped in tobacco in any form. The main stream of smoke given off by a cigar shall be of alkaline reaction to litmus paper; and the main stream of smoke of a cigarette shall be of acid reaction to litmus paper. As amended Acts 1959, 56th Leg., p. 811, ch. 368, § 1.

Emergency. Effective June 1, 1959.

## Amount of tax; stamps; disposition of revenues

## Sec. 2.

(e) From and after the effective date of this Subsection (Act), the net revenue derived from the tax levied by this Section 2 shall be allocated as follows:

One-fourth ( $\frac{1}{4}$ ) of the net revenue, after the allocation of the two and one half per cent ( $2\frac{1}{2}\%$ ) for administration and enforcement as provided by Section 30 of Acts, 1935, Forty-fourth Legislature, page 575, Chapter 241, shall be credited to the General Revenue Fund; one-fourth ( $\frac{1}{4}$ ) of the balance of the net revenue shall be credited to the Available School Fund and out of the remaining three-fourths ( $\frac{3}{4}$ ), the sum of Three Hundred and Thirty-three Thousand Dollars (\$333,000) shall be credited to the Special Fund known as the Legislative Expense Fund, and the balance of such remaining three-fourths ( $\frac{3}{4}$ ) shall be credited to the General Revenue Fund; provided, however, that after the Three Hundred and Thirty-three Thousand Dollars (\$333,000) has been allocated to the Legislative Expense Fund, all of the remaining three-fourths ( $\frac{3}{4}$ ) thereafter shall be credited to the General Revenue Fund. As amended Acts 1955, 54th Leg., p. 1080, ch. 404, art.-I, § 1; Acts 1959, 56th Leg., p. 1, ch. 1, § 3; Acts 1959, 56th Leg., 2nd C.S., p. 83, ch. 1, § 1; Acts 1959, 56th Leg., 3rd C.S., p. 395, ch. 16 § 1.

Acts 1959, 56th Leg., 2nd C.S., p. 83, ch. 1, § 1, effective July 1, 1959, and Acts 1959, 56th Leg., 3rd C.S., p. 395, ch. 16, § 1 effective 90 days after Aug. 6, 1959, date of adjournment.

Amendment of this subd. by Acts 1959, 56th Leg., p. 1, ch. 1, § 3, provided that:

"(e) From and after the effective date of this subsection (Act), the net revenue derived from the tax levied by this Section 2 shall be allocated as follows:

"One-fourth of the net revenue, after the allocation of the two and one-half ( $2\frac{1}{2}$ ) per cent for administration and enforcement as provided by Section 30 of Acts, 1935, Forty-fourth Legislature, page 575, Chapter 241, shall be credited to the General Revenue Fund; one-fourth of the balance of the net revenue shall be credited to the Available School Fund and out of the remaining three-fourths, the sum of One Million, Five Hundred Thousand Dollars (\$1,500,000) shall be credited to the special fund known as the Legislative Expense Fund, and the balance of such remaining three-fourths shall be credited to the General Revenue Fund; provided, however, that after the One Million, Five Hundred Thousand Dollars (\$1,500,000) has been allocated to the Legislative Expense Fund, all of the remaining three-fourths thereafter shall be credited to the General Revenue Fund."

Amendment of this subd. by Acts 1959, 56th Leg., 2nd C.S., p. 83, ch. 1, § 1, provided that:

"(e) From and after the effective date of this Subsection (Act) the net revenue derived from the tax levied by this Section 2 shall be allocated as follows:

"One-fourth ( $\frac{1}{4}$ ) of the net revenue, after the allocation of the two and one half per cent ( $2\frac{1}{2}\%$ ) for administration and enforcement as provided by Section 30 of Acts, 1935, Forty-fourth Legislature, page 575, Chapter 241, shall be credited to the General Revenue Fund; one-fourth ( $\frac{1}{4}$ ) of the balance of the net revenue shall be credited to the Available School Fund and out of the remaining three-fourths ( $\frac{3}{4}$ ), the sum of Four Hundred Thousand Dollars (\$400,000) shall be credited to the special fund known as the Legislative Expense Fund, and the balance of such remaining three-fourths ( $\frac{3}{4}$ ) shall be credited to the General Revenue Fund; provided, however, that after the Four Hundred Thousand Dollars (\$400,000) has been allocated to the Legislative Expense Fund, all of the remaining three-fourths ( $\frac{3}{4}$ ) thereafter shall be credited to the General Revenue Fund."

Section 2 of amendatory Acts 1959, 56th Leg., 2nd C.S., p. 83, ch. 1 provided:

"a. All moneys transferred into the Legislative Expense Fund by the provisions of this Act are hereby appropriated for the purposes described in Section 5 of Chapter 1, Acts, 1959, Fifty-sixth Legislature, Regular Session.

"b. It is further provided that beginning September 1, 1959, the Secretary of the Senate and the Chief Clerk of the House of Representatives shall set up and maintain a system of obligation or encumbrance accounting as prescribed by the State Auditor, which system shall classify expenditures in accordance with the Comptroller's standard classification of expenditure accounts in effect as of September 1, 1959."

Legislative expense fund, see note under art. 66876.

**Additional tax; exception; stamps; disposition of revenues****Sec. 2½.**

Cigarette Tax Law, see, now Title 122A,  
Taxation—General, art. 7.01.

**Cigarette Tax Stamp Board; printing or manufacture and sale of stamps  
Comptroller of Public Accounts; printing or manufacture  
and sale of stamps**

Sec. 3. (a) The Comptroller shall design and have printed or manufactured new cigarette tax stamps of such size and denomination and in such quantities as may be determined by the Comptroller. The stamps shall be so manufactured as to render them easy to be securely attached to each individual package of cigarettes; provided that a different and separate serial number or combination letter and number may be assigned to and printed on the margin of each sheet of stamps, or other methods of identification be adopted as the Comptroller may decide. The printing or manufacturing of the stamps shall be awarded by competitive bid and the contract shall be awarded to the person submitting the lowest and best bid that will afford the greatest and best protection to the state in the enforcement of the provisions of this Act.

(b) The Comptroller, acting through the Treasurer, shall, upon receipt of the stamps hereinabove authorized to be printed or manufactured, designate the date of issue of the new design of stamps by issuing a proclamation as hereinafter provided. Provided that the stamps shall be affixed by the distributor on each individual package of cigarettes that will be handled, sold, distributed, or used; that said stamps shall be supplied by said Treasurer to all distributors holding a permit at a discount of four percent (4%) of three-fourths (3/4) of the face value; provided, that no discount shall be allowed to out-of-state purchasers residing in the states that do not give discounts on cigarette tax stamps purchased from said states by Texas cigarette distributors; provided that if any distributor fails or refuses to comply with any provision of the cigarette tax law or violates the same, such distributor shall be required to pay the full face value for stamps purchased during the period of such offense and the Treasurer shall, upon receipt of an affidavit from the Comptroller, setting forth such violation, refuse to supply stamps at the discount provided until such offending distributor has paid any unauthorized discounts received by him and has otherwise purged himself of all such violations; provided further, that every distributor shall cause to be affixed to every individual package of cigarettes on which a tax is due, stamps of an amount equaling the tax due thereon, before any such distributor sells, offers for sale, or consumes, or otherwise distributes or transports the same.

(c) The State Treasurer is hereby required to redeem at face value any unused cigarette tax stamps lawfully issued prior to such change in denomination and in the possession of any bona fide owner, by exchanging at face value cigarette tax stamps for cigarette tax stamps of the new denomination. After the effective date of this Act, every person having in his possession stamps of the old denomination shall send them to the Treasurer for exchange at face value for stamps of the new denomination. Such exchange shall be made within thirty (30) days after the effective date of this Act, and it shall be unlawful for any person to have in his possession any stamps of the old denomination after the expiration of thirty (30) days from the effective date of this Act. It shall further be unlawful for any person to sell, offer for sale, or possess for the pur-

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pose of sale, cigarettes to which stamps of the old denomination are affixed. After the expiration of thirty (30) days from the effective date of this Act, stamps of the old denomination shall be void, provided, that stamps removed from cigarettes determined by the Comptroller to be unsalable may be redeemed under rules and regulations promulgated or hereafter promulgated by the Comptroller. Every retail dealer and wholesale dealer having cigarettes to which stamps of the old denomination are affixed in his stock in quantities of two thousand (2,000) or more on the effective date of this Act shall immediately inventory the same and file a report of such inventory to the Comptroller and attach to such inventory a cashier's check payable to the State Treasurer in a sum equal to the amount of additional tax due on such cigarettes computed at the new rate provided in this Act. Such retail dealer or wholesale dealer shall retain as a receipt to evidence payment of the tax a purchaser's copy of the cashier's check and shall retain a copy of the inventory reported to the Comptroller.

(d) The Comptroller is hereby authorized to change the design of the stamps as often as he may deem such change necessary to the best enforcement of the provisions of this Act, and the Treasurer is hereby required to redeem at face value any unused cigarette tax stamps lawfully issued, prior to such change in the design, which are in the possession of any bona fide owner, by exchanging at face value cigarette tax stamps of the new design. Provided, that whenever a change is made in the design of the stamps every person holding stamps of the old design shall be required to send them to the Treasurer for exchange at face value for stamps of the new design. Such exchange shall be made within sixty (60) days after the date of the issue of the new design of stamps and it shall be unlawful for any person to have in his possession any stamps of an old design after sixty (60) days from the date of issue of a new design; provided, it shall be unlawful for any person to sell, offer for sale, or possess for the purpose of sale, cigarettes to which stamps of the old design are affixed after sixty (60) days from the date of issue of a new design; provided further, that after sixty (60) days from the date of issue of any new design of stamps the old design shall be void and cigarettes with stamps of the old design affixed to the individual package shall, for the purposes of the enforcement of the provisions of this Act, be considered as cigarettes without stamps affixed thereto. It shall be the duty of the Treasurer upon receipt of any new design of stamps authorized to be printed by the Comptroller to designate the date of issue of such new design by the issuance of a proclamation and the date of such proclamation shall be the date of issue of the new design of stamps.

Any person who shall have in his possession any cigarette tax stamps of the old design after sixty (60) days from the date of issue of a new design of stamps shall be guilty of a felony and shall be punished as set out in Section 26 of this Act.

(e) Provided that any cigarette tax stamps may be exchanged only when proof satisfactory to said Treasurer is furnished that any stamps offered to said Treasurer in exchange were properly purchased and paid for by the person offering to exchange such stamps; provided, further, that stamps which are effaced or mutilated in any manner may be refused for acceptance in exchange by said Treasurer.

The Treasurer shall keep a record of all stamps sold by him or under his direction, of all stamps exchanged by him and of all refunds made on stamps purchased.

(f) Orders for cigarette tax stamps shall be sent direct to the Treasurer and it shall be the duty of the Treasurer to invoice the stamps or-

dered to the purchaser upon a form invoice to be prescribed by the Treasurer, which invoice shall be issued in triplicate and numbered consecutively. The invoice shall show the date of sale, the name and address of the purchaser, the number of stamps and their serial numbers, the denomination and value of stamps so purchased. The invoice shall be signed by the Treasurer and the original sent with stamps to the purchaser; the duplicate of the invoice shall be sent to the Comptroller and the triplicate kept by the Treasurer; provided, further, that the purchaser of said stamps shall hold the said invoice for a period of two (2) years for inspection at all times by the Comptroller and the Attorney General. No stamp affixed to a package of cigarettes shall be cancelled by any letter, numeral or any other mark of identification or otherwise mutilated in any manner that will prevent or hinder the Comptroller in making an examination as to the genuineness of said stamps.

(g) Stamps in unbroken sheets of one hundred (100) stamps may be exchanged, with the Treasurer only, for stamps of a different denomination. Provided, further, that the Treasurer shall be authorized to make refunds on unused stamps in unbroken sheets of not less than one hundred (100) stamps each to the person who purchased said stamps only when proof satisfactory to said Treasurer is furnished that any stamps upon which a refund is requested were properly purchased from said Treasurer and paid for by the person requesting such refund. Such refund shall be made from revenue derived from this Act before such revenue is allocated as herein provided.

This Section shall supersede the provisions of Section 3 contained in subdivision (b) of Section 2 of House Bill No. 2, Chapter 1, Acts, First Called Session, 51st Legislature. As amended Acts 1955, 54th Leg., p. 1080, ch. 404, art. I, § 3; Acts 1959, 56th Leg., p. 814, ch. 371, § 1.

Emergency. Effective Sept. 1, 1959.

#### Custody and destruction of stamps

Sec. 3A. The Comptroller shall have full power and authority over the cigarette stamps now on hand, and the responsibility for burning said stamps is placed upon the Comptroller. As amended Acts 1959, 56th Leg., p. 814, ch. 371, § 2.

Emergency. Effective Sept. 1, 1959.

Section 4 of the amendatory Acts of 1959, 56th Leg., p. 814, ch. 371, provided that appropriations out of the Cigarette Tax Enforcement Fund (No. 66) heretofore made to the State Board of Control to pay the

salary of the superintendent and for the purchase of cigarette stamps should hereafter be made to the Comptroller of Public Accounts.

Legislative expense fund, see art. 6687b, note.

Art. 7047c—2. Repealed. Acts 1959, 56th Leg., p. 814, ch. 371, § 3. Eff. Sept. 1, 1959

See, now, in part, Title 122A, Taxation—General, art. 7.18.

Art. 7047d. Tax on dealers in pistols

*This article as amended is repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959.*

See, now, Title 122A, Taxation—General, art. 19.01(7).

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Art. 7047f. Repealed. Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7.  
Eff. Sept. 1, 1959

Arts. 7047h to 7047j. Repealed. Acts 1959, 56th Leg., 3rd C.S., p. 187,  
ch. 1, § 7. Eff. Sept. 1, 1959

See, now, Title 122A, Taxation—General,  
art. 1.06.

Art. 7047k. Motor vehicle retail sales tax

*This article as amended is repealed by Acts 1959, 56th Leg., 3rd  
C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959.*

See, now, Title 122A, Taxation—General,  
arts. 6.01, 6.03–6.10.

Art. 7047l. Radios, cosmetics, cards; luxury excise tax; penalty for  
making false report or failure to report

*This article as amended is repealed by Acts 1959, 56th Leg., 3rd  
C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959.*

See, now, Title 122A, Taxation—General,  
art. 20.01, 20.02, 20.05, 20.06.

Art. 7047l—1. Radios and television sets; excise tax on sales

*This article as amended is repealed by Acts 1959, 56th Leg., 3rd  
C.S., p. 87, ch. 1, § 7. Eff. Sept. 1, 1959.*

See, now, Title 122A, Taxation—General,  
art. 20.01 et seq.

Art. 7047m. Stock transfer and sales tax

*This article as amended is repealed by Acts 1959, 56th Leg., 3rd  
C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959.*

See, now, Title 122A, Taxation—General,  
art. 16.01 et seq.

Art. 7057. Repealed. Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7.  
Eff. Sept. 1, 1959

See, now, Title 122A, Taxation—General,  
art. 1.03.

Art. 7057a. Occupation tax on oil produced

*This article as amended is repealed by Acts 1959, 56th Leg., 3rd  
C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959.*

See, now, Title 122A, Taxation—General,  
arts. 4.01 to 4.11.

Art. 7057b. Payment of license or privilege taxes under protest

Payment of license or privilege taxes  
under protest, see also Title 122A, Taxa-  
tion—General, art. 1.05.

Art. 7057e. Repealed. Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1.  
§ 7. Eff. Sept. 1, 1959

See, now, Title 122A, Taxation—General,  
arts. 1.07, 1.10.



## CHAPTER TWO—TAXES BASED UPON GROSS RECEIPTS

Arts. 7058, 7059. Repealed. Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959

See, now, Title 122A, Taxation—General, arts. 11.01, 11.02.

Art. 7060. 7371 Gas, electric light, power or waterworks

*This article as amended is repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959.*

See, now, Title 122A, Taxation—General, art. 11.03.

Art. 7060a. Occupation tax on certain services in connection with oil wells

*This article as amended is repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959.*

See, now, Title 122A, Taxation—General, art. 19.02.

Arts. 7061 to 7062. Repealed. Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959

Art. 7062, see, now, Title 122A, Taxation—General, art. 11.04.

Art. 7063. 7375 Sleeping, palace or dining car companies

*This article as amended is repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959.*

See, now, Taxation—General, art. 11.05.

Art. 7065. Repealed. Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959

Art. 7065b—1. Definitions; motor fuel taxes

*This article as amended is repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959.*

See, now, Title 122A, Taxation—General, arts. 9.01, 10.02.

Arts. 7065b—2, 7065b—3

*This article as amended is repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959.*

See, now, Title 122A, Taxation—General, arts. 9.02, 9.03.

Art. 7065b—4. Repealed. Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959

See, now, Title 122A, Taxation—General, art. 10.23.

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Art. 7065b—5. Sales without payment of tax for further refining, exporting and certain other purposes

*This article as amended is repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959.*

See, now, Title 122A, Taxation—General, art. 9.05.

Art. 7065b—6. Repealed. Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959

See, now, Title 122A, Taxation—General, art. 9.06.

Arts. 7065b—7, 7065b—8

*This article as amended is repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959.*

See, now, Title 122A, Taxation—General, arts. 9.07, 9.08.

Arts. 7065b—9 to 7065b—12. Repealed. Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7

See, now, Title 122A, Taxation—General, arts. 9.09 to 9.12.

Art. 7065b—13. Refunds; applications; records; license; invoice of exemption; affidavit; fire or other accident; sales to United States Government; Highway Motor Fuel Tax Fund

*This article as amended is repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959.*

See, now, Title 122A, Taxation—General, arts. 10.14, 10.15.

Art. 7065b—14. Liquefied gas and other liquid fuels; tax; permits; bonds; records; payment of tax; reports; enforcement; registration of vehicles

*This article as amended is repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959.*

See, now, Title 122A, Taxation—General, arts. 10.03, 10.08, 10.09.

Art. 7065b—14a. Liquefied gas and other liquid fuels; excise tax; amount; transit companies, application to

*This article as amended is repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959.*

See, now, Title 122A, Taxation—General, art. 9.14.

Art. 7065b—14b. Record of certificates filed kept by Highway Department; fees

*This article as amended is repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959.*

Arts. 7065b—14c to 7065b—17. Repealed. Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959

Art. 7065b—18. Violations of act; penalties; venue of suits; injunction against collection of taxes; bond in lieu of payment into suspense account

*This article as amended is repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959.*

See, now, Title 122A, Taxation—General, art. 10.18.

Art. 7065b—19 to 7065b—21. Repealed. Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959

See, now, Title 122A, Taxation—General, see arts. 9.19 to 9.21, 10.19.

Art. 7065b—22. Waiver of forfeiture proceedings on paying double amount of tax

*This article as amended is repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959.*

Arts. 7065b—23, 7065b—24. Repealed. Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959

See, now, Title 122A, Taxation—General, arts. 9.23, 9.24, 10.20.

Art. 7065b—25. Special fund for administration and enforcement; disposition of taxes collected

*This article as amended is repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959.*

A. Before any diversion or allocation of the motor fuel tax collected under the provisions of this Article is made, one per cent (1%) of the gross amount of said tax shall be set aside in the State Treasury in a special fund, to the use of the Comptroller in the administration and enforcement, of the provisions of this Article, and so much of said proceeds of one per cent (1%) of the motor fuel tax paid monthly as may be needed in such administration and enforcement, be and is hereby appropriated for said purpose. Any unexpended portion of said fund so specified shall, at the end of each fiscal year, revert to the respective funds in the proper proportions to which the Motor Fuel Tax Fund is allocated at the end of each fiscal year.

B. Each month the Comptroller of Public Accounts, shall, after making the deductions for refund purposes as provided in Section 13 of this Article,<sup>1</sup> and for the enforcement of the provisions of this Article, allocate and deposit the remainder of the taxes collected under the provisions of this Article, in the proportions as follows: one-fourth ( $\frac{1}{4}$ ) of such tax shall go to, and be placed to the credit of, the Available Free School Fund; one half ( $\frac{1}{2}$ ) of such tax shall go to and be placed to the credit of the State Highway Fund for the construction and maintenance of the State Road System under existing laws; and from the remaining one-fourth ( $\frac{1}{4}$ ) of such tax the Comptroller shall: (1) place to the credit of the County and Road District Highway Fund an amount determined by

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the Board of County and District Road Indebtedness and certified by the Board to the Comptroller of Public Accounts prior to August 31 each year, for the fiscal year beginning September 1 each year, to be required in addition to any and all funds already on hand, for the payment by the Board of the principal, interest and sinking fund requirements for such year, on all bonds, warrants or other legal evidences of indebtedness heretofore issued by counties or defined road districts of this State, which mature on or after January 1, 1933, in so far as amounts of same were issued for and proceeds have been actually expended in the construction of roads that constituted and comprised a part of the system of designated State highways on September 17, 1932, or which subsequent to such date and prior to January 2, 1939, have been designated a part of the System of State Highways and declared by the Board of County and District Road Indebtedness prior to January 2, 1945, to be eligible to participate in the distribution of the moneys in the County and Road District Highway Fund under the provisions of existing laws; (2) for the fiscal year beginning September 1, 1951, and each fiscal year thereafter, the Comptroller shall place to the credit of the Fund known as the County and Road District Highway Fund the sum of Seven Million, Three Hundred Thousand Dollars (\$7,300,000), said amount to be provided on the basis of equal monthly payments, payable on the first day of each calendar month, which sum shall be allocated by the Board of County and District Road Indebtedness to all of the counties of Texas not later than September 15 of each year, through the Lateral Road Account, as provided under Subsection (h) of Section 6, of Chapter 324 of the General and Special Laws of the Forty-eighth Legislature, Regular Session, 1943, as amended by Section 1 of Chapter 319, Acts of the Fiftieth Legislature, 1947<sup>2</sup>; and (3) the Comptroller shall place to the credit of the State Highway Fund the remainder of such one-fourth ( $\frac{1}{4}$ ) of such tax, said amount to be provided on the basis of equal monthly payments, payable on the first day of each calendar month, which sum shall be used by the State Highway Department for the construction and improvement of Farm-to-Market Roads having the same general characteristics as the roads eligible for construction under Subsection 4b of Article XX of House Bill No. 8, Chapter 184, Acts of the Regular Session of the Forty-seventh Legislature, as amended.<sup>3</sup>

C. All receipts due the Available School Fund which are in the Highway Motor Fuel Tax Fund on August 31st of each fiscal year shall be credited to the Available School Fund on August 31st of each fiscal year. As amended Acts 1951, 52nd Leg., p. 695, ch. 402, Art. XXIV (§ 1); Acts 1959, 56th Leg., 1st C.S., p. 9, ch. 1, § 3.

<sup>1</sup> Article 7065b—13.

<sup>2</sup> Article 6674q—7(h).

<sup>3</sup> Article 7083a.

Emergency. Effective June 16, 1959.

See, now, Title 122A, Taxation—General,  
arts. 9.25, 10.22.

Inseverability of amendatory act of 1959,  
see note under art. 4348a.

#### Arts. 7065b—26, 7065b—27

*This article as amended is repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959.*

See, now, Title 122A, Taxation—General,  
arts. 9.26, 9.27, 10.24, 10.25.

Arts. 7065b—28, 7065b—29. Repealed. Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959.

Art. 7066. Repealed. Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959

Art. 7066b. Motor bus companies; motor carriers; contract carriers; occupation tax

*This article as amended is repealed by Acts 1959, 56th Leg., 3rd C.S. p. 187, ch. 1, § 7. Eff. Sept. 1, 1959.*

Art. 7066b—1. Repealed. Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959

Arts. 7068, 7069. Repealed. Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959

Art. 7070. 7382 Telephone companies

*This article as amended is repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959.*

See, now, Title 122A, Taxation—General, art. 11.06.

Art. 7071. Repealed. Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959

Arts. 7076, 7078. Repealed. Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959

Additional reports to ascertain gross receipts tax, see Title 122A, Taxation—General, art. 11.08.

Penalty for failure to report gross receipts tax, see also Title 122A, Taxation—General, arts. 11.10, 11.11.

Refusal of permit until payment of occupation tax, see Title 122A, Taxation—General, art. 19.04.

Tax on business begun after beginning of quarter, see also Title 122A, Taxation—General, art. 11.07.

See, now, Title 122A, Taxation—General, arts. 1.04, 1.09.

Art. 7083. Penalties

Penalties for transacting business without permit, see Title 122A, Taxation—General, art. 11.09.

Art. 7083a. Allocation of revenue derived from certain occupations and gross receipts taxes; appropriations and allocations for certain funds; construction of farm to market roads

Sec. 2.

(1) There shall be allocated, transferred and credited to the Special Fund in the Treasury known as the 'Blind Assistance Fund' for the purpose of providing assistance to the blind in the manner as authorized by Senate Bill No. 36, Acts of the Regular Session, Forty-sixth Legislature, 1939, and any amendments thereto,<sup>1</sup> the sum of One Million, Three Hundred and Fifty Thousand, Four Hundred Dollars (\$1,350,400) for the fiscal year beginning September 1, 1959, and for each fiscal year thereafter, said amount to be provided for on a basis of equal monthly payments pay-

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

able on the first day of each calendar month. As amended Acts 1955, 54th Leg., p. 1036, ch. 392, § 1; Acts 1959, 56th Leg., 1st C.S., p. 9, ch. 1, § 2.

<sup>1</sup> Article 695c.

(2) There shall be allocated, transferred and credited to the Special Fund in the Treasury known as the 'Children's Assistance Fund' for the purpose of providing assistance on behalf of dependent children in the manner as authorized by Senate Bill No. 36, Acts of the Regular Session, Forty-sixth Legislature, 1939, and any amendments thereto, the sum of Three Million, Nine Hundred Thousand Dollars (\$3,900,000) for the fiscal year beginning September 1, 1959, and for each fiscal year thereafter, said amount to be provided on the basis of equal monthly payments payable on the first day of each calendar month. As amended Acts 1955, 54th Leg., p. 1036, ch. 392, § 1; Acts 1959, 56th Leg., 1st C.S., p. 9, ch. 1, § 2.

(3) Beginning with the fiscal year starting on September 1, 1959, and annually thereafter, there is hereby allocated and appropriated to the Teacher Retirement System of Texas in accordance with the provisions of Senate Bill No. 47, Acts of the Regular Session, Forty-fifth Legislature, 1937, and any amendments thereto, a sum each year equivalent to the contributions of the members of the Teacher Retirement System during said year. Said annual allocated and appropriated amounts shall be paid to the Teacher Retirement System in equal installments during the months of November, December, March, April, June and July of each fiscal year beginning with the year starting September 1, 1959, based upon the annual estimate by the State Board of Trustees of the Teacher Retirement System of the contributions to be received from the members of said System during each such fiscal year; provided further, that in the event said estimate of the contributions of the members of the System shall vary from the actual amount of the teachers' contributions during the year, then such adjustments as may be required shall be made on the first day of the following fiscal year with any moneys in or due the General Revenue Fund. As amended Acts 1959, 56th Leg., 1st C.S., p. 9, ch. 1, § 2.

<sup>1</sup> Article 2922—1.

(4) After the above allocations and payments have been made from such "Clearance Fund" there shall be allocated, transferred and credited to the Special Fund in the Treasury known as the "Old Age Assistance Fund" for the purpose of providing assistance to the needy aged in the manner as authorized by Senate Bill No. 36, Acts of the Regular Session, Forty-sixth Legislature, 1939, and any amendments thereto, such sum as is required, when taken together with any other funds received from any other sources by reason of other State Laws still in effect, which will total Forty Million Dollars (\$40,000,000) for the fiscal year beginning September 1, 1959, and for each fiscal year thereafter, said allocation to be provided in monthly installments, one (1) installment being payable on the first day of each calendar month.

If, on the first day of any calendar month, the amount on that day transferred from the "Clearance Fund" to the "Blind Assistance Fund," the "Children's Assistance Fund," and the "Old Age Assistance Fund" is not sufficient to provide the allocation from State Funds as herein provided for that month, then in that event, there shall be deposited to the credit of the "Blind Assistance Fund," the "Children's Assistance Fund," or the "Old Age Assistance Fund" from the first revenues collected after the first day of the month, which would otherwise go into the General Revenue Fund, such sum, as with the balance on hand in the Fund plus the payment from the "Clearance Fund" will make available in the various Funds; the total amount of State Funds for that month as is herein provided.

The allocations shall be and are in lieu of all other State allocations for aid to the blind, aid to dependent children, and old age assistance, and such allocations and appropriations shall not include any funds received from the Federal Government.

None of the money herein allocated for old age assistance payments, aid to the blind payments, or aid on behalf of needy children shall be used for the purpose of paying assistance to any person who disposes of property, either personal or real, for the purpose of qualifying or increasing need for assistance, provided that the property, if still available, would affect either eligibility or the amount of the assistance payment. As amended Acts 1955, 54th Leg., p. 1036, ch. 392, § 1; Acts 1959, 56th Leg., 1st C.S., p. 9, ch. 1, § 2.

Section 2 of the amendatory Act of 1955 provided that the provisions of this act shall become operative Sept. 1, 1955.

(4-b) After the above allocations and payments have been made from such Clearance Fund, beginning with the fiscal year September 1, 1959, and annually thereafter, there is hereby appropriated, allocated, transferred, and credited, to a fund to be known as the Farm-to-Market Road Fund of the State Highway Department of the State of Texas the sum of Fifteen Million Dollars (\$15,000,000) per year for the construction of Farm-to-Market Roads by the State Highway Department within the State of Texas. The transfer, allocation, and payment herein provided shall be made in equal installments during the months of April, May, June, July, and August of each fiscal year beginning with the fiscal year starting September 1, 1959, or as funds therefor become available.

The State Highway Department shall use the funds herein made available for the construction of Farm-to-Market Roads, meaning roads in rural areas including feeder roads, secondary roads, school bus routes, rural mail routes, milk routes, etc., and not a part of the designated State Highway System or the designated Primary Federal Aid Highway System.

These funds shall be expended on a system of roads selected by the State Highway Department after consultation with the County Commissioners Courts of the counties of Texas relative to the most needed unimproved rural roads in the counties involved. The selections shall be made in a manner to insure equitable and judicious distribution of funds and work among the several counties of the State.

The general characteristics of the roads to be selected are as follows:

a. The roads shall not be potential additions to the Federal Aid Primary Highway System;

b. The roads shall serve rural areas primarily and shall connect farms, ranches, rural homes and sources of natural resources such as oil, mines, timber, etc., and/or water loading points, schools, churches and points of public congregation, including community developments and villages;

c. The roads shall be capable of assisting in the creation of economic values in the areas served;

d. The roads shall preferably serve as public school bus routes, or rural free delivery postal routes, or both;

e. The roads shall be capable of early integration with the previously improved Texas Road System and at least one end should connect with a road already or soon to be improved on the State System of Roads.

The above allocation shall be made irrespective of any other Sub-section of this Section of this Article. As amended Acts 1959, 56th Leg., 1st C.S., p. 9, ch. 1, § 2.

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

(4-c) The allocations provided for in Section 2 of Article 7083a, Vernon's Texas Civil Statutes, (Annotated), shall be made in the following manner:

A. Of the amount in the Clearance Fund the following allocations shall be made on the first of each month, after the amounts for enforcement and the one-fourth ( $\frac{1}{4}$ ) to the Available School Fund are taken out:

First. Section 2. (1) Blind Assistance Fund;

Second. Section 2. (2) Children Assistance Fund;

Third. Section 2. (4) Old Age Assistance Fund;

Fourth. Section 2. (6) Disabled Assistance Fund.

Provided, however, that in the months of April, May, June, July, and August of each fiscal year beginning with the fiscal year starting September 1, 1959, the transfer, allocation, and payment of Three Million Dollars (\$3,000,000) to the Farm-to-Market Road Fund of the State Highway Department shall be made on or before the fifth working day of such months and shall constitute a prior claim on the amount in the Clearance Fund described in this paragraph A. If for any of such months the amount remaining in the Clearance Fund is insufficient to provide for the full allocation due to the Farm-to-Market Road Fund of the State Highway Department, then and in that event, the balance of the amount needed for such full allocation or payment to such Fund shall be transferred and paid from any moneys in or otherwise due the General Revenue Fund.

It is further provided that during the months of November, December, March, April, June and July of each fiscal year beginning with the fiscal year starting September 1, 1959, one-sixth ( $\frac{1}{6}$ ) of the annual allocation and appropriation to the Teacher Retirement System shall be made during each of such months, and during such months such allocations or payments shall represent the sixth priority claim on the amount in the Clearance Fund described in this paragraph A. If for any of such months the amount remaining in the Clearance Fund is insufficient to provide for the full allocation due to the Teacher Retirement System, then and in that event, the balance of the amount needed for such full allocation or payment to such System shall be transferred and paid from any moneys in or otherwise due the General Revenue Fund.

It is also provided that such adjustments as may be required by any variance between estimated and actual contributions by the members of such System, shall be made on the first day of the following fiscal year in the State's allocations or payments with any moneys in or otherwise due the General Revenue Fund.

B. The cash balance in the Clearance Fund remaining after the amounts for enforcements and the one-fourth ( $\frac{1}{4}$ ) to the Available School Fund are taken out, and after the allocations described in paragraph A above have been made to the funds and for the purposes therein specified, shall be allocated on the fifth working day as follows:

First. Section 2. (4-a) Foundation School Fund;

Second. Balance to General Revenue Fund.

C. Out of any and all receipts accruing to the Omnibus Tax Clearance Fund in August of each fiscal year, between the fifth working day in the month and the 31st of the month, after the amounts for enforcement and the one-fourth ( $\frac{1}{4}$ ) due the Available School Fund are taken out, the Comptroller is authorized and directed to calculate the next month's allocations due and payable under this Act to the Blind Assistance Fund, the Children's Assistance Fund, the Old Age Assistance Fund, and the Disabled Assistance Fund, in order to determine the residue of such receipts which could be credited to the General Revenue Fund;



and the amount of such residue shall be credited to the General Revenue Fund as of August 31st of each such fiscal year.

D. All receipts due the Available School Fund deposited in the Omnibus Tax Clearance Fund in August of each fiscal year between the fifth working day in the month and the 31st day of the month shall be credited to the Available School Fund on August 31st of each fiscal year. Added Acts 1955, 54th Leg., p. 1080, ch. 404, art. V, § 1 as amended Acts 1957, 55th Leg., p. 672, ch. 284, § 4; Acts 1959, 56th Leg., 1st C.S., p. 9, ch. 1, § 2.

(6) There shall be allocated, transferred, and credited to the Special Fund in the Treasury known as the 'Disabled Assistance Fund' for the purpose of providing assistance to the permanently and totally disabled in the manner as authorized by law or as hereafter may be authorized by law, during each fiscal year beginning with the fiscal year starting September 1, 1959, an amount which when added to any unobligated balance remaining in said Fund at the end of the preceding fiscal year shall aggregate the sum of One Million, Five Hundred Thousand Dollars (\$1,500,000), said amount to be provided for on the basis of equal monthly payments payable on the first day of each calendar month.

If, on the first day of any calendar month, the amount on that day transferred from the "Clearance Fund" to the "Disabled Assistance Fund" is not sufficient to provide the allocation from State funds as herein provided for that month, then in that event, there shall be deposited to the credit of the "Disabled Assistance Fund" from the first revenues collected after the first day of the month, which would otherwise go into the General Revenue Fund, after deposit of such revenues as provided in Subsection (4) of this Section, such sum, as with the balance on hand in the Fund plus the payment from the "Clearance Fund," will make available in the "Disabled Assistance Fund" the total amount of State Funds for that month as is herein provided.

The allocation shall be and is in lieu of all other State allocations for permanently and totally disabled assistance and such allocation and appropriation shall not include any Funds received from the Federal Government. Added Acts 1957, 55th Leg., p. 672, ch. 284, § 4, as amended Acts 1959, 56th Leg., 1st C.S., p. 9, ch. 1, § 2.

Effective June 16, 1959.

Inseverability of amendatory act of 1959,  
see note under art. 4348a.

### CHAPTER THREE—FRANCHISE TAX

Art.  
7084b. Collection and administration of tax  
[New].

Article 7084. Amount of tax

*This article as amended is repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959.*

See, now, Title 122A, Taxation—General,  
arts. 12.01, 12.02.

Art. 7084b. Collection and administration of tax

Section 1. The state franchise tax levied by Chapter Three, Title 122 of the Revised Civil Statutes, 1925, as amended,<sup>1</sup> heretofore collected and administered by the Secretary of State, shall from the effective date of this

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

Act be collected and administered by the Comptroller of Public Accounts. Payment of all taxes, penalties, interest or any other payments due to the state under Chapter Three, Title 122, Revised Civil Statutes, 1925, as amended, shall be transmitted to the Comptroller of Public Accounts by legal tender or cashier's check payable to the State Treasurer.

<sup>1</sup> Article 7084 et seq.

Sec. 2. All files, records, returns, forms, equipment and personal property of all kinds used in the collection and administration of the franchise tax shall be transferred from the Secretary of State to the Comptroller of Public Accounts. The Comptroller of Public Accounts shall agree with the Secretary of State on the personal property to be transferred and shall evidence such agreement in a written inventory to be signed by both officers. This agreement when signed by both officers shall be full authority for the Comptroller of Public Accounts to transfer the personal property listed thereon to his control and to enter any inventoried items on his inventory records and delete the same items from the property inventory of the Secretary of State.

Sec. 3. All appropriations made to the Secretary of State for the administration and collection of the franchise tax shall on the effective date of this Act be transferred to the Comptroller of Public Accounts.

Sec. 4. This Act shall not affect or impair any act done or right, obligation or penalty existing or accrued under the authority of the Secretary of State concerning the franchise tax in any manner prior to the effective date of this Act. Notice of the transfer of collection and administration of the franchise tax from the Secretary of State to the Comptroller of Public Accounts may be noted on the docket of any cause involving the franchise tax in any manner in any court in this state with or without formal motion on the part of the state. Acts 1959, 56th Leg., p. 705, ch. 325.

Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7 repealed articles 7084 through 7097.

Transfer of administration of franchise tax, see Title 122A, Taxation—General, art. 12.22.

Section 5 of Acts 1959, 56th Leg., p. 706, ch. 325 provided: "It is the intent of the Legislature in enacting this law that the transfer of administration and collection of the franchise tax as provided herein is to be wholly contingent on the submission to the Governor and acceptance by the Governor of a plan for the reorganization

of the tax collection functions of the Comptroller of Public Accounts. The Governor shall, by written communication to the Comptroller of Public Accounts, evidence his approval of a reorganization plan agreeable to him. The transfer of the administration and collection of the franchise tax under the provisions of this Act shall be made within forty-five (45) days from the date of such written approval."

Emergency. Effective May 30, 1959.

Art. 7084<sup>1</sup>/<sub>2</sub>. Repealed. Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959

Art. 7085. Repealed. Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959

See, now, Title 122A, Taxation—General, arts. 12.05 to 12.07, 12.09.

Art. 7086. 7395 Initial tax to be paid

*This article as amended is repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959.*

See, now, Title 122A, Taxation—General, art. 12.06.

**Art. 7087.** Repealed. Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 4, § 7.  
Eff. Sept. 1, 1959

See, now, Title 122A, Taxation—General,  
art. 12.07.

**Art. 7089.** Report of corporation

*This article as amended is repealed by Acts 1959, 56th Leg., 3rd  
C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959.*

See, now, Title 122A, Taxation—General,  
arts. 12.08, 12.10 to 12.12.

**Art. 7090.** Repealed. Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7.  
Eff. Sept. 1, 1959

See, now, Title 122A, Taxation—General,  
arts. 12.13 to 12.15.

**Arts. 7091, 7092**

*This article as amended is repealed by Acts 1959, 56th Leg., 3rd  
C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959.*

See, now, Title 122A, Taxation—General,  
arts. 12.14, 12.15.

**Arts. 7092a, 7093.** Repealed. Acts 1959, 56th Leg., 3rd C.S., p. 187,  
ch. 1, § 7. Eff. Sept. 1, 1959

See, now, Title 122A, Taxation—General,  
art. 12.04.

**Art. 7094.** 7403 Corporations exempt

*This article as amended is repealed by Acts 1959, 56th Leg., 3rd  
C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959.*

The franchise tax imposed by this Chapter shall not apply to any insurance company, surety, guaranty or fidelity company, transportation company or sleeping, palace car and dining car company now required to pay an annual tax measured by their gross receipts or to any corporation organized as a railway terminal corporation and having no annual net income from the business done by it, or to corporations having no capital stock and organized for the exclusive purpose of promoting the public interest of any city, town, county, or other area within the state, or to corporations organized for the purpose of religious worship or for providing places of burial not for private profit, or to corporations organized for the purpose of holding agricultural fairs and encouraging agricultural pursuits, or for strictly educational purposes, or for purely public charity, or to state-chartered building and loan associations; or to any mutual investment company registered under the Federal Investment Company Act of 1940,<sup>1</sup> as from time to time amended, which holds stocks, bonds or other securities of other companies solely for mutual investment purposes, or for nonprofit corporations having no capital stock organized for the purpose of the education of the public in the protection and conservation of fish, game and other wildlife, grass lands and forests; or to nonprofit water supply or sewer service corporations organized pursuant to Acts, 1933, 43rd Legislature, First Called Session, Chapter 76, as amended. As amended Acts 1951, 52nd Leg., p. 245, ch. 143, § 1; Acts 1955, 54th Leg., p. 1080, ch. 404, art. IV, § 6; Acts 1957,

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

55th Leg., p. 353, ch. 162, § 1; Acts 1957, 55th Leg., p. 790, ch. 325, § 1; Acts 1959, 56th Leg., 1st C.S., p. 21, ch. 8, § 1.

Effective 90 days after June 16, 1959, date of adjournment. See, now, Title 122A, Taxation—General, art. 12.03.

Art. 7095. Repealed. Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959

See, now, Title 122A, Taxation—General, art. 12.16.

Art. 7096. 7405 Forfeiture of charter

*This article as amended is repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959.*

See, now, Title 122A, Taxation—General, art. 12.17.

Art. 7097. Repealed. Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959

See, now, Title 122A, Taxation—General, art. 12.18.

#### CHAPTER FIVE—INHERITANCE TAX

Arts. 7117, 7118. Repealed. Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959

See, now, Title 122A, Taxation—General, arts. 14.01, 14.02.

Arts. 7118—a to 7121. Repealed. Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959

See, now, Title 122A, Taxation—General, arts. 14.03 to 14.06.

Art. 7122. Class E—Foreign Bequest

*This article as amended is repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959.*

If passing to or for the use of the United States, to or for the use of any other person or religious, educational or charitable organization or institution, or to any other person, corporation or association not included in any of the classes mentioned in the preceding portions of the original Act known as Chapter 29 of the General Laws of the Second Called Session of the 38th Legislature,<sup>1</sup> the tax shall be:

5% on any value in excess of	\$	500 and not exceeding \$	10,000
6% on any value in excess of		10,000 and not exceeding	25,000
8% on any value in excess of		25,000 and not exceeding	50,000
10% on any value in excess of		50,000 and not exceeding	100,000
12% on any value in excess of		100,000 and not exceeding	500,000
15% on any value in excess of		500,000 and not exceeding	1,000,000
20% on any value in excess of		1,000,000	

Provided, however, that this Article shall not apply on property passing to or for the use of the United States, or to or for the use of any religious, educational or charitable organization, incorporated, unincorporated or in the form of a trust, when such bequest, devise or gift is to be used within this state. The exemption from tax under the preceding provisions of this Article shall, without limiting its application under other appropriate circumstances, apply to all or so much of any bequest, devise or gift to or for the use of the United States, or a religious, educational or charitable organization, which is, in writing and prior to the payment of the tax, irrevocably committed for use exclusively within the State of Texas or transferred to a religious, educational or charitable organization for use exclusively within this state.

Provided, further, that if the property so passing is to or for the use of a religious, educational, or charitable organization which conducts its operations on a regional basis, one such region of which includes the State of Texas, or any part thereof, then a bequest, devise or gift to be used within such region shall be deemed to be used within this state.

For purposes of this paragraph a region shall comprise not more than five contiguous states, either in whole or in part, one of which is the State of Texas.

For purposes of this paragraph, a religious, educational, or charitable organization shall include, but not be limited to, a youth program of physical fitness, character development, and citizenship training or like program. As amended Acts 1955, 54th Leg., p. 1032, ch. 389, § 1; Acts 1959, 56 Leg., p. 405, ch. 186, § 1.

1 Article 7118 et seq.

Emergency. Effective May 20, 1959.

See, now, Title 122A, Taxation—General, art. 14.06.

Section 2 of the amendatory Act of 1959, provided: "The provisions of this Act shall apply in respect to a decedent dying before the effective date of this Act if the tax imposed by Article 7122, as heretofore

amended, has not been paid prior to the effective date of this Act, and shall also apply to a decedent dying after the effective date of this Act."

Section 3 repeals all conflicting laws and parts of laws to the extent of such conflict.

#### Art. 7122—a. Applicability of art. 7122

*This article as amended is repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959.*

See, now, Title 122A, Taxation—General, art. 14.07.

Arts. 7123 to 7139: Repealed. Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959

See, now, Title 122A, Taxation—General, arts. 14.08 to 14.25.

Art. 7141. Repealed. Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959

See, now, Title 122A, Taxation—General, art. 14.26.

Arts. 7143, 7144. Repealed. Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7. Eff. Sept. 1, 1959

Art. 7144, see, now, Title 122A, Taxation—General, art. 14.27.

## CHAPTER FIVE A—ADDITIONAL INHERITANCE TAXES

Art. 7144a. Repealed. Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7.  
Eff. Sept. 1, 1959

See, now, Title 122A, Taxation—General,  
arts. 15.01 to 15.16.

CHAPTER SIX—PROPERTY SUBJECT TO TAXATION  
AND RENDITION

Art. 7150. 7507, 5065 Exemption from taxation

Sec. 21. Property owned or used exclusively and reasonably necessary in conducting any association engaged in the educational development of boys, girls, young men or young women through a program designed to demonstrate the operation of the American business system of private enterprise and operating under a State or National organization of like character. Added Acts 1959, 56th Leg., p. 1098, ch. 500, § 1.

Emergency. Effective June 1, 1959.

Tex.St.Supp. '60—36

**TITLE 122A—TAXATION—GENERAL**

Acts 1959 (56th Leg.) 3rd Called Session, Ch. 1

Approved Aug. 6, 1959

Effective Sept. 1, 1959

An Act revising and rearranging certain Statutes of Title 122 "Taxation" of the Revised Civil Statutes of Texas and certain other laws of this State relating to taxation into a new Title to be known as Title 122A "Taxation-General" of the Revised Civil Statutes of Texas; revising Statutes levying the poll tax, natural gas production tax, oil production tax, sulphur production tax, motor vehicle sales tax, cigarette tax, motor fuel (gasoline) tax, special fuels tax, utilities tax, corporation franchise tax, coin-operated machines tax, inheritance tax, additional inheritance tax, stock transfer tax, Chain Store Tax, Cement Production Tax, Admissions Tax, miscellaneous occupation taxes, and miscellaneous excise taxes; increasing or otherwise changing the rates of the motor vehicle sales tax, the cigarette tax, the utility companies tax (excepting telephone and telegraph companies) and the excise tax on radios and television sets; reducing rate of Theater Admissions Tax; levying certain new and additional taxes for the support of the State Government including a Tobacco Products Tax, additional corporation franchise taxes, an occupation tax on the occupation or privilege of obtaining the production of dedicated gas within this State and on the business or occupation of producing such gas to be known as the "Severance Beneficiary Tax," hotel occupancy tax, excise taxes on boats and boat motors, air conditioners, precious or semi-precious stones, all items made of fur on the hide or pelt, articles made of precious metals, phonographs and component parts used in the assembly, installation, maintenance or testing of radios, television sets or phonographs; providing procedures for the administration and enforcement of such taxes and penalties for violations thereof; providing for the use of certain funds for tax administration and enforcement purposes; providing for the allocation of funds under this Title; amending Section 21 of Article 1, Chapter 467, Acts of the Forty-fourth Legislature, Second Called Session, 1935, as amended (compiled as Article 666—21 of Vernon's Annotated Penal Code of Texas) increasing the tax on distilled spirits and wine; specifically repealing certain enumerated Statutes and Acts relating to taxation and certain other laws; providing for rules and regulations for administration; providing rules of construction and interpretation of this Act; providing a savings clause; providing a severability clause; providing that the provisions of Chapter 22 of this Act shall be non-severable; providing for an effective date; and declaring an emergency.

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Section 1. That the following Chapters and Articles are adopted and shall constitute a new Title of the Revised Civil Statutes of Texas to be known as "Title 122A, Taxation-General."

## CHAPTER I

### GENERAL PROVISIONS

#### Art.

- 1.01 Applicability of Standard Rules of Construction
- 1.02 Section and Article Headings
- 1.03 Revenue Duties; Governor; Comptroller
- 1.04 Penalties Recovered by Suit
- 1.05 Payment of License or Privilege Taxes under Protest
- 1.06 Injunctions Against Collection of Excise, Occupation, and Certain Other Taxes, Fees and Penalties
- 1.07 Lien; Failure to Withhold Taxes; Penalties; Fines; Etc. Cumulative
- 1.08 Certified Claim as Evidence
- 1.09 Levy by Cities and Counties
- 1.10 Rules and Regulations, Civil Penalty
- 1.11 Tax Credits

#### Art. 1.01 Applicability of Standard Rules of Construction

Unless specifically altered by this Act or unless the context requires otherwise, the provisions of Articles 10, 11, 12, 14, 22 and 23, Revised Civil Statutes of Texas, and of Acts, Fiftieth Legislature, 1947, Chapter 359 compiled as Texas Civil Statutes, Article 23a (Vernon's 1948) apply to this Act.



**Art. 1.02 Section and Article Headings**

Section and article headings are not a part of this Act. They are mere catch words designed to give some indication of the contents of the sections and articles to which they are attached.

**Art. 1.03 Revenue Duties; Governor; Comptroller**

The Governor may, whenever in his judgment the public service demands it, direct the Comptroller to investigate books and accounts of the assessing and collecting officers of this State, and all officers and persons disbursing, receiving or having in their possession public funds, and to make such other investigations and perform such other duties in the interest of the public revenues as the Governor may direct. Whenever any such investigation is ordered by the Governor, the Comptroller shall report to him in writing the results thereof, and point out the particulars, if any, wherein the revenue laws have been violated or their enforcement neglected, together with the names of those delinquent therein. Whereupon the Governor shall institute civil and criminal proceedings through the Attorney General in the name of the State against such delinquent parties who are reported by the Comptroller to be delinquent. The Comptroller shall have power at any time to examine and check up all and any expenditures of money appropriated for any of the state institutions or for any other purpose or for improvements made by the State on State property or money received and disbursed by any board authorized by law to receive and disburse any State money. The Comptroller shall also have power and authority and it is hereby made his duty, to fully investigate any State institution when so directed by the Governor or required by information coming to his own knowledge. He shall investigate the manner of conducting the same and the policy pursued by those in charge thereof, and the conduct or efficiency of any person employed therein by the State. He shall examine into and report upon the character and manner as well as the amount of expenditures thereof, and investigate and ascertain all sums of money due the State from any source whatever, the ascertainment and collection of which does not devolve upon other officers of this State under existing law; and he shall report all such facts to the Governor. When the Comptroller, acting under the direction of the Governor, calls on any person connected with the public service to inspect his accounts, records or books, said person so called upon shall submit to said agent all books, records and accounts so called for without delay.

**Art. 1.04 Penalties Recovered by Suit**

(1) All delinquent State taxes and penalties therefor due and owing to the State of Texas, of every kind and character whatsoever, including all franchise, occupation, gross receipts, gross production, gross premiums tax on insurance companies, inheritance, gasoline, excise and all other State taxes which become delinquent other than State ad valorem taxes on property shall be recovered by the Attorney General in a suit brought by him in the name of the State of Texas.

(2) The venue and jurisdiction of all suits arising hereunder is hereby conferred upon the courts of Travis County.

(3) For the purpose of carrying out the terms of this Article the Comptroller or any authorized agent shall have the authority to examine at the principal or any other office in the United States of any person, firm, agent or corporation permitted to do business in this State, all books, records and papers and also any officers or employees thereof,

under oath; and failure or refusal of any person, firm, agent or corporation to permit such examination shall, upon certification of such refusal by the Comptroller to the Secretary of State, immediately forfeit the charter or permit to do business in this State until such examination as is required to be made is completed. The Comptroller shall not make public or use said information derived in the course of said examination of said books, records and papers and/or officers or employees except for the purpose of some judicial proceeding for the collection of delinquent taxes in which the State of Texas is a party.

#### **Art. 1.05 Payment of License or Privilege Taxes Under Protest**

(1) **Protest.** Any person, firm, or corporation who may be required to pay to the head of any department of the State Government any occupation, gross receipts, franchise, license or other privilege tax or fee, and who believes or contends that the same is unlawful and that such public official is not lawfully entitled to demand or collect the same shall, nevertheless, be required to pay such amount as such public official charged with the collection thereof may deem to be due the State, and shall be entitled to accompany such payment with a written protest, setting out fully and in detail each and every ground or reason why it is contended that such demand is unlawful or unauthorized.

(2) **Suits for recovery of taxes or fees.** Upon the payment of such taxes or fees, accompanied by such written protest, the taxpayer shall have ninety (90) days from said date within which to file suit for the recovery thereof in any court of competent jurisdiction in Travis County, Texas, and none other. Such suit shall be brought against the public official charged with the duty of collecting such tax or fees, the State Treasurer and the Attorney General. The issues to be determined in such suit shall be only those arising out of the grounds or reasons set forth in such written protest as originally filed. The right of appeal shall exist as in other cases provided by law. Provided, however, where a class action is brought by any taxpayer all other taxpayers belonging to the class and represented in such class action who have properly protested as herein provided shall not be required to file separate suits but shall be entitled to and governed by the decision rendered in such class action. A class action shall include any suit filed by any two or more persons, firms, corporation or association of persons who have paid under protest such taxes or fees referred to in section (1) hereof.

(3) **Payment of additional taxes under protest after filing suit; amendment of petition; jurisdictional amount.** After such suit is filed in a court of competent jurisdiction in Travis County, and before such suit is tried by said court, said taxpayer pays additional taxes under protest, the grounds of protest being the same as in the original petition filed in said court, and the total of said taxes exceeds the jurisdiction of said court, then the taxpayer will be authorized to file suit within ninety (90) days after the payment of such additional taxes in a court in Travis County which has jurisdiction of the total amount of said taxes paid under protest, and when such suit is filed it shall be deemed to have been filed in conformity with provisions of this Chapter; provided further, that a taxpayer may amend his original petition setting up such additional taxes paid under protest, and such amendment, if filed within ninety (90) days after the date of payment of such additional taxes under protest, shall not be considered a new cause of action. Provided further, that if any appeal is taken from the final judgment rendered in such suit, the taxpayer will not be relieved of the duty of continuing paying said taxes under protest pending the appeal of said case;

however, it will not be necessary for such taxpayer to file suit within ninety (90) days after the payment of such taxes, but the disposition of such taxes shall be governed by the outcome of the original suit. The provisions of this Article shall apply to all taxes paid under protest, and which taxes have not been finally determined to belong to the State.

(4) **Lists remitted to State Treasurer.** It shall be the duty of such public official to transmit daily to the State Treasurer all money so received, with a detailed list of all those remitting same, and he shall inform the State Treasurer in writing that such money was paid under protest as hereinabove provided. A deposit receipt shall be issued by the Comptroller for the daily total of such remittances from each department; and the cashier of the Treasury Department shall keep a cash book to be called "Suspense Cash Book," in which to enter such deposit receipts. Upon the receipt of such money by the State Treasurer it shall be his duty and he is hereby required to immediately and forthwith place the same in State depositories bearing interest in the same manner as any other funds of the State required to be placed in such depositories at interest, and the State Treasurer shall further be required to allocate whatever interest is earned on such funds and to credit the amount thereof to such suspense account until the status of such money is finally determined as herein provided.

(5) **Refunds and warrants.** If suit is not brought within the time and within the manner provided in this Article, or in the event it finally be determined in such suit that the sums of money so paid or any portion thereof, together with the pro rata interest earned thereon, belong to the State, then and in that event it shall be the duty of the State Treasurer to transfer such money from the suspense account to the proper fund of the State by placing the portion thereof belonging to the State in such fund by the issuance of a deposit warrant. When such deposit warrant or warrants are issued, they shall be entered in the cash book, and the proper fund to which such money is so transferred shall be properly credited therewith. In the event, however, that suit is brought by such taxpayer within the time and within the manner provided in this Article, and it be finally determined that such money so paid by such taxpayer, or any part thereof, was unlawfully demanded by such public official and that the same belongs to such taxpayer, then and in that event it shall be the duty of the State Treasurer to refund such amount, together with the pro rata interest earned thereon, to such taxpayer by the issuance of a refund warrant, the same to be issued in separate series and to be used for making such refunds, to be styled and designated "Tax Refund Warrants" and such warrants shall be written and signed by the Comptroller and countersigned by the State Treasurer and charged against the suspense account, as hereinabove provided and shall then be returned to the Comptroller and delivered by him to the persons entitled to receive the same.

#### **Art. 1.06 Injunctions Against Collection of Excise, Occupation, and Certain Other Taxes, Fees and Penalties**

(1) Before any restraining order or injunction shall be granted in this State to restrain or enjoin the collection of any excise tax, occupation tax, sales tax, severance tax, gross receipts tax, license or permit tax, and registration or filing fee or any statutory penalties assessed for failure to pay any of such taxes and before any restraining order or injunction shall be granted against any state official or his authorized representatives in this State to restrain or enjoin the collection of any of the foregoing taxes, fees and penalties, the applicant therefor shall pay

into the suspense account of the State Treasurer all taxes, fees and penalties then due by him to the State and the application for restraining order or injunction shall reflect said fact of payment under oath of the applicant, his agent or attorney.

(2) Provided, however, that unless otherwise provided by Statute, said applicant may, in lieu of paying such taxes, fees and penalties into the suspense account of the State Treasurer, file with said Treasurer a good and sufficient bond to guarantee the payment of such taxes, fees and penalties in an amount equal to twice the amount of all taxes, fees and penalties then due and which may reasonably be expected to become due during the pendency of said injunction. The amount of such bond and the sureties thereon shall be approved by and acceptable to the judge of the court granting said injunction and the Attorney General of this State and the application for said restraining order or injunction shall reflect under oath of the applicant, his agent or attorney, that said bond has been approved and filed as aforesaid. Whenever it appears to the Attorney General that any such bond has become insufficient to cover double the amount of the taxes, fees and penalties accruing subsequent to the granting of said injunction, the said Attorney General shall demand of said applicant that additional bond be filed.

(3) Provided, further, that said applicant shall keep during the pendency of the injunction and for a period of one (1) year thereafter open to the inspection at all times of the Attorney General of this State and all other State officials authorized to enforce the collection of such taxes, fees and penalties, a well bound book record of all taxes accruing during the pendency of such restraining order or injunction. Such book record shall include a record of purchases, receipts and sales or other disposition of all commodities, products, materials or articles upon which such taxes are levied or by which the amount of such taxes are measured.

(4) Provided further, that said applicant shall make and file with the state official authorized to enforce the collection of the tax involved, on Monday of each week, a report on a form or forms to be prescribed by said state official showing the weekly accruals of the tax involved together with total purchases, receipts, sales and other disposition of all commodities, products, materials, and articles on which the tax involved in such injunction is levied or by which such tax is measured. Such report shall also show the name and address of all persons from whom such commodities, products, materials and articles were purchased or received and the name and complete address of all persons to whom such commodities, products, materials and articles were sold or distributed. If payment of the tax involved is evidenced or measured by the sale or use of stamps or tickets, a complete record of all such stamps and tickets used, sold or handled shall be kept and shall be included in said report.

(5) Said application and temporary injunction or restraining order shall be immediately dismissed and dissolved after hearing, if said applicant fails, at any time before the case shall have been finally disposed of by the court of last resort to keep the records or make and file the reports required herein or to comply with the Attorney General's demand to file any additional bond necessary to cover double the amount of taxes, fees and penalties accruing subsequent to the granting of said injunction or in the absence of a bond, to pay, on Monday of each week, into the suspense account of the Treasurer of Texas all taxes, fees and penalties involved in said litigation and thereafter becoming due, and such payments shall be made before said taxes, fees and/or penalties become delinquent.

(6) Any proceedings to enjoin the collection of any of the foregoing taxes shall be in a court of competent jurisdiction in Travis County, Texas.

(7) The Attorney General or any state official authorized to enforce the collection of the tax involved may file in the court granting such injunction an affidavit that said applicant has failed to comply with the provisions of this Article or has violated the same. Upon the filing of said affidavit, the clerk of said court shall issue notice to the said applicant to appear before such court upon the date named therein, which shall be within five (5) days from service of such notice or as soon as the court can hear the same, to show cause why such injunction should not be dismissed, which notice shall be served by the sheriff of the county in which the applicant resides or any other peace officer in this State.

(8) In the event the injunction is finally dissolved or dismissed the Treasurer shall make demand upon the applicant and his sureties on any bond filed in lieu of the payment of any taxes, fees and penalties, for immediate payment of said taxes, fees and penalties which if not paid shall be recovered in a suit to be filed by the Attorney General in a court of competent jurisdiction in Travis County, Texas, or any court having jurisdiction.

(9) Provided further, that if said injunction is dissolved or dismissed all taxes, fees and penalties or other funds paid into the suspense account to the Treasurer under the provisions of this Article shall be paid to the funds to which said taxes, fees and penalties are allocated.

(10) If the final judgment maintains the right of the applicant to a permanent injunction to prevent the collection of such taxes, the funds so deposited shall be refunded by the Treasurer to said applicant together with any depository interest the Treasurer may have collected for the deposit of such funds.

#### **Art. 1.07 Lien; Failure to Withhold Taxes; Penalties; Fines, etc. Cumulative**

(1) All taxes, fines, penalties and interest due by an individual, firm, association, joint stock company, syndicate, copartnership, corporation, agency, trustee, or receiver to the State of Texas, by virtue of this Title, shall be a preferred lien, first and prior to any and all other existing liens, contract or statutory, legal or equitable, and regardless of the time such liens originated, upon all the property of any individual, firm, association, joint stock company, syndicate, copartnership, corporation, agency, trustee, or receiver. This lien shall be cumulative, and in addition to the liens for taxes, fines, penalties, and interest now provided by law, and shall attach as of the date such tax or taxes are due and payable.

(2) Any person, firm, corporation, or association of persons purchasing any natural resources upon which a tax is levied by this Title who fails to deduct and withhold the proper amount of taxes which are due and unpaid under any provision of this Title, shall be liable to the State for the full amount of such taxes plus any accrued penalties and interest thereon.

(3) All penalties, fines, forfeitures or penal offenses provided in this Title as to the same offense, shall be cumulative of one another and of any other fines, penalties, forfeitures or penal offenses provided by any other law of this State applicable to such offense. Should any such fines, penalties, forfeitures, or penal offenses be in conflict so that such could not be cumulative as above provided, then that law or part of the law containing the provision for the highest penalty in dollars shall be effective and apply as to each such offense, and that law or part of the law containing the provision for the highest fine in dollars (where a fine alone is provided for) shall be effective and apply to each such offense, and in

case of forfeiture that law or part of the law containing a provision for the most onerous forfeiture shall be effective and apply to each such offense, and in case of penal offenses containing a provision providing for imprisonment, that law or part of the law containing the provision for the longest maximum imprisonment shall be effective and apply to each such offense; and in each such instance, the lesser fine, penalty, forfeiture, penal offense or punishment shall be suspended.

#### **Art. 1.08 Certified Claim as Evidence**

If any person, firm, corporation, or association of persons engaging in or pursuing any occupation on which, under the laws of this State, an occupation tax is imposed, who fails or refuses to pay such tax, and it becomes necessary to intervene in any manner for the establishment or collection of said tax claims or penalties, a claim showing the amount of tax due the State, certified to by the Comptroller of Public Accounts or his chief clerk, shall be admissible in evidence in such proceedings and shall be prima facie evidence of the contents thereof; provided, however, that the incorrectness of said claim may be shown.

#### **Art. 1.09 Levy by Cities and Counties**

No city, county or other political subdivision may levy an occupation tax levied by this Act unless specifically permitted to do so by the Legislature of the State of Texas.

#### **Art. 1.10 Rules and Regulations, Civil Penalty**

The Comptroller of Public Accounts shall have the power and authority to make and publish rules and regulations, not inconsistent with any existing laws or with the Constitution of this State or of the United States, for the enforcement of the provisions of this Title and the collection of revenues hereunder.

Forfeiture for violation of rules and regulations. If any person in this State shall fail to comply with the rules and regulations promulgated by the Comptroller of Public Accounts or violate the same, he shall forfeit to the State the sum of not less than Twenty-five Dollars (\$25) nor more than Five Hundred Dollars (\$500). Each day's violation shall constitute a separate offense and incur another penalty, which if not paid shall be recovered in a suit by the Attorney General of this State in a court of competent jurisdiction in Travis County, Texas, or any other court having jurisdiction.

#### **Art. 1.11 Tax Credits**

(1) This Article applies to any occupation, excise, gross receipts, franchise, license or other privilege tax or fee collected or administered by the Comptroller of Public Accounts. It does not apply to the state ad valorem tax.

(2) When the Comptroller determines that any person, firm or corporation has through mistake of law or fact overpaid the amount due the State on any tax collected or administered by the Comptroller, the Comptroller may with the consent of the taxpayer credit the person, firm or corporation overpaying the tax with the amount of such overpayment.

(a) Consent by a person, firm or corporation to accept a tax credit under this Article constitutes an irrevocable election and a waiver of any further claim or cause of action for the overpayment credited.

(b) Overpayments shall be credited only to liability for the same tax overpaid, and for penalties and interest due the State for late or insufficient payments of the same tax.

(c) Credits shall not include any interest on the amount overpaid nor shall credits bear any interest after issuance.

(d) Credits for overpayment issued by the Comptroller are not assignable.

(e) Credits issued expire at the end of five (5) years from the date of issuance by the Comptroller. At the end of this five (5) years any outstanding balance credited but not set off against tax liability including any penalties or interest is automatically cancelled. Cancellation extinguishes the outstanding balance as an obligation of the State and no suit may be brought under this or any other law to collect the outstanding balance.

(f) The Comptroller shall keep a public record of credits issued. He may prescribe rules and regulations for the administration of this Article.

(3) This Article is cumulative of all other laws concerning the payment of taxes, and does not affect the provisions of Acts, 1933, Forty-third Legislature, Chapter 214, as amended (codified as Article 1.05 of this Chapter) concerning the payment of taxes under protest.

## CHAPTER 2

### POLL TAX

#### Art.

#### 2.01 Levy and Collection; Amount

#### Art. 2.01

There shall be levied and collected from every person between the ages of twenty-one (21) and sixty (60) years, resident within this State on the first day of January of each year (Indians not taxed, and persons insane, blind, or those who have lost one (1) hand or foot, or are permanently disabled, excepted), an annual poll tax of One Dollar and Fifty Cents (\$1.50). One Dollar (\$1) for the benefit of the free schools, and fifty cents (50¢) for general revenue purposes. Said Tax shall be collected and accounted for by the tax collector each year and appropriated as herein required. No county shall levy more than twenty-five cents (25¢) poll tax for county purposes.

## CHAPTER 3

### TAX ON PRODUCERS OF NATURAL GAS

#### Art.

#### 3.01 Calculation of Tax

#### 3.02 Market Value

#### 3.03 Records and Payment

#### 3.04 Definitions

#### 3.05 Liability for Tax; Payment

#### 3.06 Verifying Reports; Investigations, Rules and Regulations

## Art.

- 3.07 Delinquent Taxes
- 3.08 Penalty for Violation; Lien; Suits
- 3.09 Suit to Collect Tax; Report or Audit as Evidence, Report of Transfer
- 3.10 Removal of Gas; Report of Transfer

**Art. 3.01 Calculation of Tax**

(1) There is hereby levied an occupation tax on the business or occupation of producing gas within this State, computed as follows:

A tax shall be paid by each producer on the amount of gas produced and saved within this State equivalent to seven per cent (7%) of the market value thereof as and when produced.

Provided, however, that the amount of the tax on sweet and sour gas shall never be less than 121/1500 of one cent (1¢) per one thousand (1,000) cubic feet.

(2) In calculating the tax herein levied, there shall be excluded: (a) gas injected into the earth in this State, unless sold for such purpose; (b) gas produced from oil wells with oil and lawfully vented or flared; and (c) gas used for lifting oil, unless sold for such purposes.

**Art. 3.02 Market Value**

(1) The market value of gas produced in this State shall be the value thereof at the mouth of the well; however, in case gas is sold for cash only, the tax shall be computed on the producer's gross cash receipts. Payments made by purchasers to producers for the purpose of reimbursing such producers for taxes due hereunder shall not be considered a part of the producer's gross cash receipts. In all cases where the whole or a part of the consideration for the sale of gas is a portion of the products extracted from the producer's gas or a portion of the residue gas, or both, the tax shall be computed on the gross value of all things of value received by the producer, including any bonus or premium; provided that notwithstanding any other provision herein to the contrary, where gas is processed for its liquid hydrocarbon content and the residue gas is returned by cycling methods, as distinguished from repressuring or pressure maintenance methods, to some gas producing formation, the taxable value of such gas shall be three-fifths ( $\frac{3}{5}$ ) of the gross value of all liquids extracted, separated and saved from such gas, such value to be determined upon separation and extraction and prior to absorption, refining or processing of such hydrocarbons and such value prior to refining shall be the value of the highest posted price of crude oil in the field where said gas is produced or in the nearest oil field in the event no oil is produced in said field and the quantity of the products shall be measured by the total yield of the processing plant from such gas.

(2) All condensate recovered from gas shall be taxed at the same rate as oil and shall be valued for the purpose of computing the tax due thereon at the prevailing market price for condensate in the general area where the same is recovered. The term "condensate" shall include all liquid hydrocarbons that are or can be recovered from gas by means of a separator but shall not include any liquid hydrocarbons which can only be recovered from gas by refrigeration or absorption and separated by a fractionating process.

Where additional liquid hydrocarbons other than condensate are recovered from gas the taxable value of such additional liquid hydrocarbons shall be determined by deducting from the total receipts of the



producer for all liquid hydrocarbons recovered from his gas the taxable value assigned to the condensate and the applicable rate set forth in sub-section (1) of Article 3.01 shall be applied to the difference to determine the tax due hereunder on such additional liquid hydrocarbons.

#### **Art. 3.03 Records and Payment**

(1) The tax hereby levied shall be a liability of the producer of gas and it shall be the duty of each such producer to keep accurate records in Texas of all gas produced, making monthly reports under oath as hereinafter provided.

(2) The purchaser of gas shall pay the tax on all gas purchased and deduct the tax so paid from the payment due the producer or other interest holders, making such payments so deducted to the Comptroller of Public Accounts by legal tender or cashier's check payable to the State Treasurer; such moneys so deducted from payments due producers for the payment of this tax shall be held by the purchaser in trust for the use and benefit of the State of Texas and shall not be commingled with any other funds held by said purchaser, and shall be remitted to the State Treasurer in accordance with the terms and provisions of this Act; and it shall be the duty of each such purchaser to keep accurate records in Texas of all such gas purchased.

(3) The tax herein levied shall be due and payable at the office of the Comptroller at Austin on the last day of the calendar month, based on the amount of gas produced and saved during the preceding calendar month, and on or before said date each such producer shall make and deliver to the Comptroller a verified report on forms prescribed by the Comptroller showing the gross amount of gas produced, less the exclusions and at the pressure base set out herein, upon which the tax herein levied accrues, together with details as to amounts of gas, from what leases said gas was produced, the correct name and address of the first purchaser of said gas, and such other information as the Comptroller may desire; such report to be accompanied by legal tender or cashier's check payable to the State Treasurer for the proper amount of taxes herein levied. In no event shall a producer be relieved of responsibility for the tax until same shall have been paid, and provided, in the event the amount of the tax herein levied shall be withheld by a purchaser from payments due a producer and said purchaser fails to make payment of the tax to the State as provided herein the producer may bring legal action against such a purchaser to recover the amount of tax so withheld, together with penalties and interest which may have accrued by failure to make such payment and shall be entitled to reasonable attorney's fees and court costs incurred by legal action.

(4) Provided, that unless such payment of tax on all gas produced during any month or fractional part thereof shall be made on or before the date due as hereinabove specified, such payment shall become delinquent and a penalty of ten per cent (10%) of the amount of the tax shall be added; such tax and penalty shall bear interest at the rate of six per cent (6%) per annum from date due until date paid.

(5) The tax herein levied shall be borne ratably by all interested parties, including royalty interests; and producers and/or purchasers of gas are hereby authorized and required to withhold from any payment due interested parties, the proportionate tax due and remit the same to the Comptroller.

**Art. 3.04 Definitions**

(1) For the purpose of this Act "producer" shall mean any person owning, controlling, managing, or leasing any gas well and/or any person who produces in any manner any gas by taking it from the earth or waters in this State, and shall include any person owning any royalty or other interest in any gas or its value whether produced by him, or by some other person on his behalf, either by lease, contract, or otherwise.

(2) "First purchaser" shall mean any person purchasing gas from the producer.

(3) "Subsequent purchaser" shall mean any person who purchases gas for any purpose whatsoever, when said gas is purchased from any person other than the producer.

(4) "Carrier" shall mean the owner, operator, or manager of any means of transporting gas or any instrumentality that may now be used or come into use for such purpose.

(5) "Gas" shall mean natural and casinghead gas or other gas taken from the earth or waters, regardless of whether produced from a gas well or from a well also productive of oil, distillate and/or condensate, or other products.

(6) The term "sweet gas" shall mean all natural gas except sour gas and casinghead gas.

(7) The term "sour gas" shall mean any natural gas containing more than one and one half (1½) grains of hydrogen sulphide per hundred (100) cubic feet, or more than thirty (30) grains of total sulphur per one hundred (100) cubic feet.

(8) The term "casinghead gas" shall mean any gas and/or vapor indigenous to an oil stratum and produced from such stratum with oil.

(9) "Report" shall mean any report required to be furnished in this Act or that may be required by the Comptroller in the administration of this Article.

(10) "Person" shall include any person, firm, concern, receiver, trustee, executor, administrator, agent, institution, association, partnership, company, corporation, and persons acting under declarations of trust as well as the trustees acting under such declarations of trust.

(11) "Production" or "total gas produced" shall mean the total gross amount of gas produced including all royalty or other interest; that is, the amount for the purpose of the tax imposed by this Article shall be measured or determined by meter readings showing one hundred per cent (100%) of the full volume expressed in cubic feet.

(12) For the purposes of this Chapter, the term "cubic foot of gas" or "standard cubic foot of gas" means the volume of gas (including natural and casinghead) contained in one cubic foot of space at a standard pressure base and at a standard temperature base. The standard pressure base shall be 14.65 pounds per square inch absolute, and the standard temperature base shall be 60 degrees Fahrenheit. Whenever the conditions of pressure and temperature differ from the above standard, conversion of the volume from these conditions to the standard conditions shall be made in accordance with the Ideal Gas Laws, corrected for deviation.

(13) "Royalty owners" shall mean and include all persons owning any mineral rights under any producing leasehold within this State, other than the working interest, which working interest is that of the person having the management and operation of the well.

(14) "Comptroller" shall mean Comptroller of Public Accounts of the State of Texas.

**Art. 3.05 Liability for Tax; Payment**

(1) The tax herein imposed on the producing of gas shall be the primary liability of the producer as hereinabove defined, and every person purchasing gas from producer thereof and taking delivery thereof at or near the premises where produced shall collect said tax imposed by this Chapter from the producer. Every purchaser including the first purchaser and the subsequent purchaser, required to collect any tax under this Chapter, shall make such collection by deducting and withholding the amount of such tax from any payments made by such purchaser to the producer, and remit same as herein provided. This Section shall not affect any pending lawsuit in the State of Texas or any lease agreement or contract now or that hereafter may be in effect between the State of Texas or any political subdivision thereof and/or the University of Texas and any gas producer.

(2) When it shall appear that a taxpayer to whom the provisions of this Chapter shall apply has erroneously paid more taxes than were due during any taxpaying period either on account of a mistake of fact or law, it shall be the duty of the State Comptroller to credit the total amount of taxes due by such taxpayer for the current period with the total amount of taxes so erroneously paid.

(3) The tax hereby levied shall be a liability upon the producer, the first purchaser, and/or subsequent purchaser or purchasers as herein provided.

(4) The tax hereby levied shall be paid by the first purchaser purchasing the same from the producer, who shall deduct the same from the amount paid producer, as aforesaid, provided, however, that the failure of first purchaser to pay said tax shall not relieve the producer from the payment of same, nor shall it relieve any subsequent purchaser from the payment of same, where the first purchaser does not account for and pay said tax, and it shall be the duty of every person purchasing gas produced in Texas to satisfy himself or itself that the tax on said gas has been or will be paid by the persons primarily liable therefor.

**Art. 3.06 Verifying Reports; Investigations, Rules and Regulations**

(1) The Comptroller shall employ auditors and/or other technical assistants for the purpose of verifying reports and investigating the affairs of producers and/or purchasers to determine whether the tax is being properly reported and paid. He shall have the power to enter upon the premises of any taxpayer liable for a tax under this Chapter, and any other premises necessary in determining the correct tax liability, and to examine, or cause to be examined, any books, or records of any person, subject to a tax under this Chapter, and to secure any other information directly or indirectly concerned in the enforcement of this Chapter, and to promulgate and enforce, according to law, rules and regulations pertinent to the enforcement of this Chapter, which shall have the full force and effect of law. Before any division or allotment of the occupation tax collected under the provisions of this Chapter is made, one half ( $\frac{1}{2}$ ) of one (1) per cent of the gross amount of said tax shall be set aside in the Treasury for the use of the Comptroller in the administration and enforcement of the provisions of this Chapter and so much of the said proceeds of one half ( $\frac{1}{2}$ ) of one (1) per cent of the occupation tax paid monthly as may be needed in such administration

and enforcement is hereby appropriated for such purpose, subject however to appropriation by the Legislature. At the close of each State fiscal year unspent appropriations for enforcement purposes shall revert to the funds to which the net proceeds of the tax levied herein are paid and in the same proportions.

#### **Art. 3.07 Delinquent Taxes**

In the event any person engaged in the business of producing any gas in this State shall become delinquent in the payment of the proper taxes herein imposed, or fails to file required reports with the Comptroller, the Attorney General by a suit in the name of the State of Texas shall have the right to enjoin such person from producing gas until the delinquent tax is paid or said reports filed, and the venue of any such suit for injunction is hereby fixed in Travis County.

#### **Art. 3.08 Penalty for Violation; Lien; Suits**

Any person, firm, association or corporation shall be subject to a penalty of not less than One Hundred Dollars (\$100) nor more than One Thousand Dollars (\$1,000) for failure or omission to keep the records required herein, or for the violation of any of the other provisions hereof, and each day's violation shall constitute a separate offense. The State shall have a prior lien for all delinquent taxes, penalties and interests on all property and equipment used by the producer of gas in his business of producing gas, and if any producer of gas shall fail to remit the proper taxes, penalties, and interest due, or any of them, the Comptroller may employ auditors or other persons to ascertain the correct amount due, and the producer of gas shall be liable, as additional penalty, for the reasonable expenses or the reasonable value of such services of representatives of the Comptroller, incurred in such investigation and audit; provided, that all funds collected for audits and examinations shall be placed in the Natural and Casinghead Gas Audit Fund in the State Treasury and shall constitute a revolving fund which may be used from time to time by the Comptroller in making such audits in addition to the general appropriation made for such purposes, and all of said funds to be placed in said Natural and Casinghead Gas Audit Fund are hereby appropriated for such purpose. The Attorney General shall file suit in the name of the State of Texas for all delinquent taxes, penalties, and other amounts due, and for the enforcement of all liens under this law; and the venue of any such suit is hereby fixed in Travis County.

#### **Art. 3.09 Suit to Collect Tax; Report or Audit as Evidence, Report of Transfer**

(1) If any producer or purchaser of natural and/or casinghead gas fails or refuses to pay any tax, penalty, or interest within the time and manner provided by this Chapter and it becomes necessary to bring suit or to intervene in any manner for the establishment or collection of said claim in any judicial proceedings, any report filed in the office of the Comptroller by such producer or purchaser or representative of said producer or purchaser or a certified copy thereof certified to by the Comptroller of Public Accounts showing the amount of gas produced on which tax, penalties or interest have not been paid, or any audit made by the Comptroller or his representative from the books of said producer or purchaser when filed and sworn to by such representative as being made from the records of said producer or purchaser, such report or audit shall be admissible in evidence in such proceedings and shall be prima facie evi-

dence of the contents thereof; provided, however, that the incorrectness of said report or audit may be shown; provided, further, that such report or audit may be admitted in evidence only against the party by or from whom it was made.

(2) In the event the Attorney General shall file suit or claim for taxes, provided for in the foregoing, and attach or file as an exhibit any report or audit of said producer or purchaser, and an affidavit made by the Comptroller or his representative that the taxes shown to be due by said report or audit are past due and unpaid; that all payments and credits have been allowed, then, unless the party resisting the same shall file an answer in the same form and manner as required by Article 3736, Revised Civil Statutes of Texas of 1925, as amended by Chapter 239, Acts of the Regular Session of the Forty-second Legislature, said audit or report shall be taken as prima facie evidence thereof, and the proceedings of said Article are hereby made applicable to suits to collect taxes hereunder.

#### **Art. 3.10 Removal of Gas; Report of Transfer**

(1) On notice from the State Comptroller, it shall be unlawful for any person to produce or remove any natural and/or casinghead gas from any lease in this State whenever the owner or operator of said lease has failed to file reports as required under the provisions of this Chapter.

(2) Whenever any lease producing natural and/or casinghead gas changes hands, it shall be the duty of the owner or operator of said lease to note on his last report that said lease has been sold or transferred, showing the effective date of said change and the name and address of the individual, firm, association, joint stock company, syndicate, copartnership, corporation, agency, or receiver who will operate said lease and be responsible for the filing of reports provided for in this Chapter. It further shall be the duty of the new owner or operator of said lease to note on his first report that said lease has been acquired, showing the effective date of said change and the name and address of the individual, firm, association, joint stock company, syndicate, copartnership, corporation, agency, or receiver formerly owning and/or operating said lease.

### CHAPTER 4

#### OCCUPATION TAX ON OIL PRODUCED

##### Art.

- 4.01 Definitions
- 4.02 Amount and Computation of Tax
- 4.03 Primary Liability; Mode of Payment; Refunds, Penalties
- 4.04 Records and Reports
- 4.05 Purchasers to Deduct Tax
- 4.06 Reports to Comptroller; Payment of Tax
- 4.07 Prior Lien of State for Taxes; Penalties and Interest
- 4.08 Collection of Delinquent Taxes, Venue, Evidence
- 4.09 Unlawful Removal of Oil From Lease
- 4.10 Lease Transfers Noted on Reports
- 4.11 Duties of Comptroller
- 4.12 False Entries and Other Unlawful Acts
- 4.13 Interfering with Inspector
- 4.14 Measuring Oil or Gas

**Art. 4.01 Definitions**

(1) For the purpose of this Chapter "producer" shall mean any person owning, controlling, managing or leasing any oil well and/or any person who produces in any manner any oil by taking it from the earth or waters in this State, and shall include any person owning any royalty or other interest in any oil or its value whether produced by him, or by some other person on his behalf, either by lease, contract or otherwise.

(2) "First purchaser" shall mean any person purchasing crude oil from the producer.

(3) "Subsequent purchaser" shall mean any person operating any reclamation plant, topping plant, treating plant, refinery, and/or any kind or character of processing plant, or anyone who purchases oil for any purpose whatsoever, when said oil is purchased from any person other than the producer.

(4) "Carrier" shall mean the owner, operator, or manager of any means of transporting oil or any instrumentality that may now be used or come into use.

(5) "Oil" shall mean crude oil, or other oil taken from the earth, regardless of gravity of the oil.

(6) "Report" shall mean any report required to be furnished in this Chapter or that may be required by the Comptroller in the administration of this Chapter.

(7) "Person" shall include any person, firm, concern, receiver, trustee, executor, administrator, agent, institution, association, partnership, company, corporation, and persons acting under declarations of trust as well as the trustees acting under such declarations of trust.

(8) "Production" or "total oil produced" shall mean the total gross amount of oil produced including all royalty or other interest; that is, the amount for the purpose of the tax imposed by this Chapter shall be measured or determined by tank tables compiled to show one hundred per cent (100%) of the full capacity of tanks without deductions for overage or losses in handling. Allowance for any reasonable and bona fide deduction for basic sediment and water, and for correction of temperature to sixty (60) degrees Fahrenheit will be allowed. If the amount of oil produced has been measured or determined by tank tables compiled to show less than one hundred per cent (100%) of the full capacity of tanks, then such amount shall be raised to a basis of one hundred per cent (100%) for the purpose of the tax imposed by this Chapter.

(9) "Royalty owners" shall mean and include all persons owning any mineral rights under any producing leasehold within this State, other than the working interest, which working interest, is that of the person having the management and operation of the well.

(10) "Comptroller" shall mean Comptroller of Public Accounts of the State of Texas.

(11) "Commission" shall mean the Railroad Commission of Texas.

**Art. 4.02 Amount and Computation of Tax**

(1) There is hereby levied an occupation tax on oil produced within this State of four and six-tenths cents (4.6¢) per barrel of forty-two (42) standard gallons. Said tax shall be computed upon the total barrels of oil produced or salvaged from the earth or waters of this State without any deductions and shall be based upon tank tables showing one hundred per cent (100%) of production and exact measurements of contents. Provided, however, that the occupation tax herein levied on oil shall be four and

six-tenths per cent (4.6%) of the market value of said oil whenever the market value thereof is in excess of One Dollar (\$1) per barrel of forty-two (42) standard gallons. The market value of oil, as that term is used herein, shall be the actual market value thereof, plus any bonus or premiums or other things of value paid therefor or which such oil will reasonably bring if produced in accordance with the laws, rules, and regulations of the State of Texas.

**Art. 4.03 Primary Liability; Mode of Payment; Refunds, Penalties**

(1) The tax herein imposed on the producing of crude petroleum shall be the primary liability of the producer as hereinbefore defined, and every person purchasing crude petroleum from the producer thereof and taking delivery thereof at the premises where produced shall collect said tax imposed by this Chapter from the producer. Every purchaser including the first purchaser and the subsequent purchaser, required to collect any tax under this Chapter, shall make such collection by deducting and withholding the amount of such tax from any payments made by such purchaser to the producer, and remit same as herein provided. This Section shall not affect any pending law suit in the State of Texas, or any lease agreement or contract now or that hereafter may be in effect between the State of Texas or any political subdivision thereof and/or The University of Texas and any oil producer.

(2) When it shall appear that a taxpayer to whom the provisions of this Chapter shall apply has erroneously paid more taxes than were due during any taxpaying period either on the account of a mistake of fact or law, it shall be the duty of the State Comptroller to credit the total amount of taxes due by such taxpayer for the current period with the total amount of taxes so erroneously paid.

(3) The tax hereby levied shall be a liability upon the producer, the first purchaser, and/or subsequent purchaser or purchasers as herein provided.

(4) The tax hereby levied shall be paid by the first purchaser purchasing the same from the producer, who shall deduct the same from the amount paid producer, as aforesaid, provided, however, that the failure of first purchaser to pay said tax shall not relieve the producer from the payment of same, nor shall it relieve any subsequent purchaser from the payment of same, where the first purchaser does not account for and pay said tax, and the State shall have a lien on all of the oil produced in Texas in the hands of the producer, the first purchaser and any subsequent purchaser to secure the payment of the tax, and it shall be the duty of every person purchasing oil produced in Texas to satisfy himself or itself that the tax on said oil has been or will be paid by the persons primarily liable therefor.

(5) If the oil produced by said producer is not sold during the month in which it is produced, then said producer shall pay the tax at the same rate and in the same manner as if said oil were sold during said month. In such case, however, the working interest operator may pay such tax and deduct it from the interest of the other interest holders.

(6) The tax herein levied shall be borne ratably by all interested parties, including royalty interests, and producers and/or purchasers of oil are hereby authorized and required to withhold from any payment due interested parties the proportionate tax due.

(7) The tax hereby levied shall be a liability of the producer of oil and it shall be the duty of such producer to keep accurate records of all oil produced, making monthly reports under oath as hereinafter provided.

(8) The purchaser of oil shall pay the tax on all oil purchased and deduct tax so paid from payment due producer or other interest holder, making such payments so deducted to the Comptroller of Public Accounts by legal tender or cashier's check payable to the State Treasurer. Provided, that if oil produced is not sold during the month in which produced, then said producer shall pay the tax at the same rate and in the manner as if said oil were sold.

(9) The tax levied herein shall be paid monthly on the twenty-fifth day of each month on all oil produced during the month next preceding by the purchaser or the producer as the case may be, but in no event shall a producer be relieved of responsibility for the tax until same shall have been paid, and provided, in event the amount of the tax herein levied shall be withheld by a purchaser from payments due a producer and said purchaser fails to make payment of the tax to the State as provided herein the producer may bring legal action against such purchaser to recover the amount of tax so withheld, together with penalties and interest which may have accrued by failure to make payments and shall be entitled to reasonable attorneys fees and court costs incurred by such legal action.

(10) Provided, that unless such payment of tax on all oil produced during any month or fractional part thereof shall be made on or before the twenty-fifth of the month immediately following, such payment shall become delinquent and a penalty of ten per cent (10%) of the amount of the tax shall be added; such tax and penalty shall bear interest at the rate of six per cent (6%) per annum from date due until paid.

#### **Art. 4.04 Records and Reports**

(1) A complete record shall be kept by every producer of oil within this State, said records to show the county or counties in which said producer operates, the correct name or names of the lease or leases from which oil is produced, the total number of barrels of oil produced from each lease, the correct name and address of the first purchaser, the total number of barrels of oil sold or delivered to each first purchaser and the price received therefor. And in addition shall keep a record of all oil used on the lease from which said oil is produced or which may be refined or processed in any manner by the producer upon the lease from which said oil is produced; and if said oil is not sold, the location of storage and the total number of barrels in storage, if owned by such operator, or if stored with a pipe line or a refinery, the correct name and address of such pipe line or refinery.

(2) Every producer shall file monthly on the twenty-fifth day of each month with the Comptroller under oath of the producer or his duly authorized agent a report showing the total number of barrels of oil produced by said producer during the month preceding the date of the report, the county in which the oil is produced, the correct name of the lease from which the oil is produced, the correct name and address of the first purchaser of said oil and the price received therefor, and such other information as Comptroller may require; said records and reports shall be open to the inspection of the Comptroller or the Attorney General or the duly authorized agents of the Comptroller or Attorney General.

(3) Every first purchaser shall keep in Texas records showing the correct name and address of the producer from whom said first purchaser buys oil, the county in which said oil is produced, the true and correct name of the lease from which said oil is produced, the total number of barrels bought, and the price paid therefor; and in addition shall keep a record showing the total number of barrels of said oil so purchased and



used, refined, or processed in any manner by said first purchaser and the total number of barrels of oil sold by him, the price received therefor, and the true and correct name and address of the subsequent purchaser of said oil. On the twenty-fifth day of each month each and every first purchaser of oil shall file with the Comptroller, under oath of the first purchaser or his duly authorized agent, a report showing the total number of barrels of oil purchased during the preceding month, the price paid therefor, the correct name and address of the producer or producers from whom said oil was purchased, the county in which the oil was produced, and the correct name of the lease from which said oil was produced, and such other information as Comptroller may require; said records and reports shall be open to the inspection of the Comptroller and/or Attorney General or their duly authorized agents.

(4) Each and every subsequent purchaser, shall keep in Texas a record showing the correct name and address of each first purchaser or subsequent purchaser from whom any oil is bought, the total number of barrels purchased and the price paid therefor, the date of purchase, the disposition of said oil, the total number of barrels used, refined, or processed in any manner by said subsequent purchaser, and if sold shall show the correct name and address of the subsequent purchaser to whom said oil is sold or delivered and the date of said sale and/or delivery, and the price received therefor.

(5) Each and every subsequent purchaser shall file with the Comptroller on the twenty-fifth day of each month a report under oath of the subsequent purchaser or a duly authorized agent showing the correct name and address of the person from whom said subsequent purchaser has bought oil during the preceding month, the total number of barrels purchased, the price paid therefor, and the disposition of said oil; said reports to show the total number of barrels of oil used, refined, or processed in any manner by said subsequent purchaser and the correct name and address of any subsequent purchaser to whom said oil was sold and the number of barrels sold, and the price received therefor; said records and reports shall be open to the inspection of the Comptroller or the Attorney General or the duly authorized agents of the Comptroller or Attorney General.

(6) Royalty owners shall only keep a record of all moneys received as royalty from any producing leasehold within this State. They shall also keep a copy of all settlement sheets furnished them by the purchaser or operator or any other statement showing the number of barrels of oil from which royalty was received and the amount of tax deducted; said records shall be open to the inspection of the Comptroller or the Attorney General or their duly authorized agents.

(7) Every carrier, including all railroads, barges, trucks, or pipe lines, carrying or transporting oil for hire, for themselves or their owners, shall keep in Texas a complete and accurate record of all oil so handled by months, showing date received, number of barrels, of whom received, point of delivery, to whom delivered and manner of transportation, and such records shall be open to the inspection of the duly authorized agents of the Comptroller or the Attorney General at all times, and, if requested by the Comptroller, shall furnish information and reports of movements as often as required by the Comptroller; provided however, that nothing in this bill imposing a tax on those enjoying the privilege herein taxed shall be construed as impairing any contract whereby any interest holder or other person has agreed to pay any part of the tax in the past or in the future, but said tax is imposed on all of said interest holders as their interests appear and shall be paid as herein provided,

and this Act is not intended to relieve any person of any contractual liability whatsoever.

#### **Art. 4.05 Purchasers to Deduct Tax**

Purchasers buying oil from properties in litigation or in receivership, bankruptcy, or any other legal proceedings, or covered by assignments, are required to deduct the amount of the taxes levied by this Act, before payment is made to the producers, trustees, assignees or to any person who claims ownership of said funds, or before the proceeds of said purchase of oil is impounded or escrowed by said purchaser pending such litigation or tenure of assignments, and shall remit said tax deducted in the same manner as if said oil had been purchased from any other source, and providing that said purchaser shall not be liable to any claimant of said funds on account of payment of said tax.

#### **Art. 4.06 Reports to Comptroller; Payment of Tax**

(1) At the time of filing the reports herein required, the first purchaser shall pay to the Comptroller by legal tender or cashier's check, payable to the State Treasurer, the tax herein required to be paid. Failure to pay said tax on the twenty-fifth day of the month immediately following, shall cause said tax to become delinquent and a penalty of ten per cent (10%) of the amount of said tax shall be added, such tax and penalty to bear interest at the rate of six per cent (6%) per annum from the date due until the date paid.

#### **Art. 4.07 Prior Lien of State for Taxes; Penalties and Interest**

(1) For the tax, penalties and interest herein provided for, the State shall have a prior and preferred lien on every leasehold interest, ownership of the oil rights, or the value of oil rights or other interest, including oil produced and oil runs owned by the person owing any tax herein, and in addition thereto such lien shall include equipment, tools, tanks, and all other implements used on said lease from which oil is produced. Said lien shall extend to and be enforceable against any property, either real or personal, or both, owned by any person or persons made liable for the tax herein levied, which property is not exempt from forced sale by reason of existing laws or the Constitution of this State.

(2) It is further provided that when any oil is discovered upon which the tax herein provided for has not been paid as and when provided for herein, any sheriff, ranger or other peace officer is authorized to levy on said oil by notice to the owner or other person in charge, that said oil is levied on for taxes due on it and after ten (10) days notice posted at the site of the oil, said officer shall proceed to sell said oil to the highest bidder for cash. Any money received for said oil in excess of the taxes and ten (10) per cent commission to the officer selling the property, shall be paid by said officer to the owner of said oil. The officer selling same shall transmit the amount of the tax to the Comptroller or his duly authorized representative. Should the oil sold fail to sell for enough to pay said taxes, the officer selling same shall deduct ten per cent (10%) of the amount received and forward the balance to the Comptroller. Provided however, that no ranger shall receive any commission for services performed in the enforcement of this provision.

#### **Art. 4.08 Collection of Delinquent Taxes, Venue, Evidence**

(1) It shall be the duty of the Attorney General to bring legal action for the collection of delinquent taxes herein levied, and a suit instituted

shall attach to oil in storage, in transit, or being produced by such operator, and venue for such suits herein provided shall be in the District Court of Travis County, Texas.

(2) If any producer or purchaser of crude oil, or subsequent purchaser, fails or refuses to pay any tax, penalty, or interest within the time and manner provided by this Chapter and it becomes necessary to bring suit or to intervene in any manner for the establishment or collection of said claim in any judicial proceedings, any report filed in the office of the Comptroller by such producer or purchaser or representative of said producer or purchaser or a certified copy thereof certified to by the Comptroller of Public Accounts showing the amount of crude oil produced or purchased on which such tax, penalties or interest have not been paid, or any audit made by the Comptroller or his representative from the books of said producer or purchaser when filed and sworn to by such representative as being made from the records of said producer or purchaser, such report or audit shall be admissible in evidence in such proceedings and shall be prima facie evidence of the contents thereof; provided, however, that the incorrectness of said report or audit may be shown; provided further that such report or audit may be admitted in evidence only against the party by or for whom it was made.

(3) In the event the Attorney General shall file suit or claim for taxes, provided for in the foregoing, and attach or file as an exhibit any report or audit of said producer or purchaser, and an affidavit made by the Comptroller or his representative that the taxes shown to be due by said report or audit are past due and unpaid; and all payments and credits have been allowed, then, unless the party resisting the same shall file an answer in the same form and manner as required by Article 3736, Revised Civil Statutes of 1925, as amended by Chapter 239, Acts of the Regular Session of the Forty-second Legislature, said audit or report shall be taken as prima facie evidence thereof, and the proceedings of said Article are hereby made applicable to suits to collect taxes hereunder.

#### **Art. 4.09 Unlawful Removal of Oil from Lease**

On notice from the State Comptroller, it shall be unlawful for any person to remove any oil from any lease in this State whenever the owner or operator of said lease has failed to file reports as required under the provisions of this Act.

#### **Art. 4.10 Lease Transfers Noted on Reports**

(1) Whenever any lease producing oil changes hands, it shall be the duty of the owner or operator of said lease to note on his last report that said lease has been sold or transferred, showing the effective date of said change and the name and address of the individual, firm, association, joint stock company, syndicate, copartnership, corporation, agency, or receiver who will operate said lease and be responsible for the filing of reports provided for in this Act.

(2) It further shall be the duty of the new owner or operator of said leases to note on his first report that said lease has been acquired, showing the effective date of said change and the name and address of the individual, firm, association, joint stock company, syndicate, copartnership, corporation, agency, or receiver formerly owning and/or operating said lease.

#### **Art. 4.11 Duties of Comptroller**

(1) It shall be the duty of the Comptroller to promulgate rules and regulations governing the detail administration of the terms and require-

ments of this Chapter not specifically mentioned herein; to employ auditors and supervisors for the purpose of verifying reports and investigating the affairs of producers and/or purchasers to determine whether the tax is being properly reported and paid. Before any division or allotment of the occupation tax on oil collected under the provisions of this Chapter is made, one half of one per cent ( $\frac{1}{2}$  of 1%) of the gross amount of said tax shall be set aside in the Treasury subject to the use of the Comptroller in the administration and enforcement of the provisions of this Chapter, and so much of the said proceeds of one half of one per cent ( $\frac{1}{2}$  of 1%) of the occupation tax on oil paid monthly as may be needed in such administration and enforcement shall be expended in the amounts and for the purposes fixed by the Legislature in the General Appropriation Bill. Any unexpended portion of said fund so specified shall at the end of the fiscal year revert to the respective funds or accounts in proper proportions to which the occupation tax on oil is proportioned at the end of the fiscal year.

#### **Art. 4.12 False Entries and Other Unlawful Acts**

Whoever, as producer, first purchaser, subsequent purchaser, or carrier, or whoever shall as a principal or as agent or representative of such principal, knowingly make any false entries or fail to make any proper entries in the books required by this Chapter with intent to defraud the State; or whoever as such, shall knowingly make a false or incomplete report as required by this Chapter; or whoever, as such, shall knowingly fail or refuse to make the report required to be made; or whoever, as such, shall destroy, mutilate, or secrete any of the records required to be kept by the provisions of this Chapter; or whoever shall, as such, hide or secrete with intent to defraud, any of the property upon which a lien is created hereunder, or whoever fails or refuses to permit the Comptroller or the Attorney General or the duly authorized representative of either to inspect the records and reports herein provided for, shall be guilty of a misdemeanor and upon conviction thereof shall be fined in the sum of not less than Twenty-five Dollars (\$25), nor more than Five Thousand Dollars (\$5,000) or confined in the county jail for not less than one month, nor more than six (6) months, or by both such fine and imprisonment.

#### **Art. 4.13 Interfering with Inspector**

Each and every person appointed by the Commission and holding the certificate of the Commission authorizing such appointee to inspect oil wells, oil leases, pipe lines, railroad cars or tanks shall have the right of free access to such leases, premises, wells, pipe lines, railroad cars, or tanks, and to motor truck tanks, at any and all times for the purpose of inspection with respect to the production and transportation of oil. Any person or owner producing oil in this State who shall by objection, interference, or otherwise prevent any such person so appointed by the Commission from the free right of access to any leases or premises or wells where oil is produced, or who shall in any manner interfere with such representative's examination of any such leases, premises, or wells to ascertain the quantity and time of production of oil, shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not exceeding Five Hundred Dollars (\$500) or by imprisonment in the county jail not exceeding six (6) months or by both such fine and imprisonment.

#### **Art. 4.14 Measuring Oil or Gas**

It shall be unlawful for any person owning, leasing, operating, or controlling any oil property within the State of Texas to permit the oil or gas

so produced to pass beyond the possession or control of such person into the possession or control of any other person without first accurately measuring the amount of such oil or such gas, and making and preserving an accurate record thereof. It shall also be unlawful for any person to use any method or device to evade such accurate measurement. Upon conviction for a willful violation of any provision hereof, such person shall be deemed guilty of a felony and, upon such conviction shall be punished by confinement in the State penitentiary for a term of not less than two (2) nor more than four (4) years.

## CHAPTER 5

### OCCUPATION TAX ON SULPHUR PRODUCERS

#### Art.

- 5.01 Occupation Tax on Sulphur Producers, Amount of Tax
- 5.02 Reports, Penalties for Failure to Keep Records
- 5.03 Failure to Pay Tax, Penalties

#### Art. 5.01 Occupation Tax on Sulphur Producers. Amount of Tax

Sulphur Producers: Each person, firm, association, or corporation who owns, controls, manages, leases, or operates any sulphur mine, or mines, wells or shafts, or who produces sulphur by any method, system, or manner within this State shall make quarterly, on the first day of January, April, July, and October of each year, a report to the Comptroller in this State, or if such person be other than individual, sworn to by its president, secretary, or other duly authorized officer, on such forms as the Comptroller shall prescribe, showing the total amount of sulphur produced within this State by said person during the quarter next preceding, and at the time of making said report shall pay to the Treasurer of this State an occupation tax for the quarter ending on said date an amount equal to One Dollar and Forty Cents (\$1.40) per long ton, or fraction thereof, of all sulphur produced by said person within the State of Texas during said quarter.

#### Art. 5.02 Reports, Penalties for Failure to Keep Records

(1) Each person subject to the payment of this tax shall cause to be made, kept, and preserved a full and complete record of all sulphur produced in this State by it, all of which record shall be open at all times to official inspection and examination by the Comptroller or the Attorney General, or any employee of or representative of the Comptroller or the Attorney General. Said records may be destroyed after three (3) years from the last entry appearing in any such record. Any person failing to keep such record, or records, as herein required, shall forfeit to the State of Texas as a penalty any sum not less than Five Hundred Dollars (\$500) nor more than Five Thousand Dollars (\$5,000), payable to the State of Texas, and each ten (10) days of failure to keep such records shall constitute a separate offense and subject the offender to additional penalties for each such period of failure to keep such records.

#### Art. 5.03 Failure to Pay Tax. Penalties

(1) Any person subject to the payment of said tax on sulphur failing to pay the tax levied in this Chapter within thirty (30) days after same is due and payable shall pay to the State as a penalty an additional amount

equal to ten per cent (10%) of the taxes due, and such tax and penalty shall draw interest at the rate of six per cent (6%) per annum from the due date until paid. The Attorney General or any district or county attorney at the direction of the Attorney General shall bring suit in behalf of the State to recover the amount of taxes, penalties, and interest past due and payable by any person affected by this law. The word "person" as used in this law shall include persons, firms, partnerships, companies, corporations, associations, common law trusts, or other concern by whatever name or howsoever organized, formed, or created.

(2) The Comptroller may require such other information and such additional reports as he may deem advisable.

## CHAPTER 6

### MOTOR VEHICLE RETAIL SALES AND USE TAX

#### Art.

- 6.01 Tax on Retail Sale of Motor Vehicles
- 6.02 Duties of Comptroller of Public Accounts
- 6.03 Use Tax
- 6.04 New Resident Use Tax
- 6.05 Definitions
- 6.06 Fees and Taxes are Additional
- 6.07 Collection of Taxes
- 6.08 Affidavits and Sales Invoices as to Consideration, Sales Records
- 6.09 Affidavit Error Fee
- 6.10 Receipts; Disposition of Collections
- 6.11 Operation Without Payment of Tax
- 6.12 Penalty for Not Keeping Records

#### Art. 6.01 Tax on Retail Sales of Motor Vehicles

(1) There is hereby levied a tax upon every retail sale of every motor vehicle sold in this State, such tax to be equal to one and one-half per cent (1.5%) of the total consideration paid or to be paid to the seller by the buyer, which consideration shall include the amount paid or to be paid for said motor vehicle and all accessories attached thereto at the time of the sale, whether such consideration be in the nature of cash, credit or exchange of other property, or a combination of these. In the event the consideration received by the seller includes any tax imposed by the Federal government, then such Federal tax shall be deducted from such consideration for the purpose of computing the amount of tax levied by this Article upon such retail sale.

(2) In all cases of retail sales involving the exchange of motor vehicles, the party transferring the title to the motor vehicle having the greater value shall be considered the seller, and no tax is imposed upon the transfer of a motor vehicle traded in upon the purchase of some other motor vehicle. Where such a retail sale involves an even exchange, each of the two (2) parties to the transaction shall pay a tax of Five Dollars (\$5). Where a person makes a gift of a motor vehicle, the donee shall pay a tax of Ten Dollars (\$10).

#### Art. 6.02 Duties of Comptroller of Public Accounts

The Comptroller of Public Accounts shall have general supervision over the collection of the taxes imposed by this Chapter. He may estab-

lish rules and regulations for the determination of taxable value of motor vehicles and all County Tax Collectors and Assessors shall be furnished with such rules and regulations, and such rules and regulations shall be consistently applied to the determination of taxable value of each motor vehicle purchased in this State or taxable under the use tax levied by Art. 6.03 of this Chapter.

**Art. 6.03 Use Tax**

There is hereby levied a use tax upon every motor vehicle purchased at retail sale outside of this State and brought into this State for use upon the public highways thereof by a resident of this State or by a person, firm or corporation domiciled or doing business in this State. Such tax shall be equal to one and one-half per cent (1.5%) of the total consideration paid or to be paid for said vehicle at said retail sale. The tax shall be the obligation of and be paid by the person, firm, or corporation operating said motor vehicle upon the public highways of this State.

**Art. 6.04 New Resident Use Tax**

When a person makes application for the initial certificate of title in this State on a particular motor vehicle, he shall pay a use tax on that motor vehicle in the sum of Fifteen Dollars (\$15). No certificate of title or motor vehicle registration for such motor vehicle shall be issued until the use tax imposed by this Article has been paid. However, a person is not liable for the tax imposed by this Article if the sales or use tax imposed by any other provision of this Chapter has been previously paid upon such motor vehicle. It is the purpose of this subsection to impose a use tax upon motor vehicles brought into this State by new residents of this State.

**Art. 6.05 Definitions**

(1) The terms "sale" and "sales" as herein used shall include installment and credit sales, and the exchange of property as well as the sale thereof for money, every closed transaction constituting a sale. The transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the price shall be deemed a sale.

(2) The term "retail sale" or "retail sales" as herein used shall include all sales of motor vehicles except those whereby the purchaser acquires a motor vehicle for the exclusive purpose of resale and not for use.

(3) The term "motor vehicle" as used in this Act shall mean every self-propelled vehicle in or by which any person or property is or may be transported upon a public highway, including trailers and semitrailers. It shall not mean any device moved only by human power or used exclusively upon stationary rails or tracks and shall not include farm machinery or farm trailers or road building machinery or any self-propelled vehicle used exclusively to move any of the three (3) immediately preceding vehicles.

**Art. 6.06 Fees and Taxes are Additional**

The license fees and taxes imposed by or under this Chapter shall be in addition to any and all license fees and taxes imposed by or under any other law of this State.

**Art. 6.07 Collection of Taxes**

The taxes levied in this Chapter shall be collected by the Assessor and Collector of Taxes of the county in which any such motor vehicle is first registered or first transferred after such a sale; the Tax Collector shall refuse to accept for registration or for transfer any motor vehicle until the tax thereon is paid.

When a tax becomes due on a motor vehicle purchased outside of this State and brought into this State for use upon the highways the person, firm, or corporation operating said motor vehicle upon the public highways of this State shall pay the tax imposed by Art. 6.03 to the Tax Collector of the county in which such motor vehicle is to be registered. The tax shall be paid at the time application is made for registration of said motor vehicle, and the Tax Collector shall refuse to issue the registration license until the tax is paid.

**Art. 6.08 Affidavits and Sales Invoices as to Consideration, Sales Records**

(1) The purchaser and seller shall make a joint affidavit setting forth the then value in dollars of the total consideration, whether in money or other things of value, received or to be received by the seller or his nominee in a retail sale. Where a transfer of title to a motor vehicle is made either as the result of an even exchange or of a gift, the two (2) principal parties to such a transaction shall make a joint affidavit setting forth the facts describing the nature of the transaction. In an even exchange no transfer of title shall be accomplished until the two (2) principal parties have paid a tax of Five Dollars (\$5) each to the Tax Assessor and Collector. Where any party to a sale, exchange, even exchange or gift is a corporation, the president, vice president, secretary, manager or other authorized officer of the corporation shall make the affidavit for the corporation. When any tax imposed by this Chapter is paid to the Tax Assessor and Collector, the person upon whom the tax is imposed by this Act shall file with the Tax Assessor and Collector the joint affidavit required by this Article. The Tax Collector and Assessor shall keep copies of the affidavits until they are called for by the Comptroller of Public Accounts or his representative for auditing.

(2) The seller shall keep complete records of each motor vehicle transferred by him at a retail sale including a true and complete copy of the invoice pertaining to the transaction described by such affidavit. Said invoice shall show the full price of the motor vehicle plus the itemized price of all accessories attached thereto. The record shall be retained by the seller at his principal office for at least two (2) years from the date of the transfer of the motor vehicle. All sales and supporting records of each seller shall be open to inspection by the Tax Assessor and Collector and the Comptroller of Public Accounts or his authorized representative.

**Art. 6.09 Affidavit Error Fee**

(1) Where the joint affidavit incorrectly states the amount of the consideration actually received by the seller so that the tax actually paid is less than that which was actually due, the seller shall pay an affidavit error fee as follows:

(a) Twenty-five Dollars (\$25) if the actual consideration received by the seller was from five per cent (5%) through ten per cent (10%) greater than the consideration upon which the tax was paid, and

(b) One Hundred Dollars (\$100) if the actual consideration received by the seller was in excess of ten per cent (10%) greater than the consideration upon which the tax was paid.



(2) The seller shall pay the affidavit error fee to the Tax Collector and Assessor. One-half ( $\frac{1}{2}$ ) of the affidavit error fee shall be retained by the county as a fee of office or paid into the officers' salary fund of the county, as is provided by general law. The remainder of the affidavit error fee shall be paid over to the State.

**Art. 6.10 Receipts; Disposition of Collections**

The Tax Assessor and Collector shall issue a receipt to the person paying the taxes imposed by this Chapter, making two (2) duplicate copies of the said receipt. The Comptroller of Public Accounts shall prescribe the form of the receipt. On the tenth day of each month, the Tax Assessor and Collector shall forward ninety-six and one-half per cent (96.5%) of the money collected from the taxes imposed by this Chapter and one-half ( $\frac{1}{2}$ ) of the affidavit error fees collected during the preceding month to the Comptroller of Public Accounts, together with one (1) duplicate copy of each receipt issued by him to persons paying the tax or fee imposed by this Chapter. The Tax Assessor and Collector shall retain one (1) duplicate receipt as a permanent record in his office and shall retain three and one-half per cent (3.5%) of the taxes and one-half ( $\frac{1}{2}$ ) of the affidavit error fees collected as fees of office, or to be paid into the officers' salary fund of the county as provided by General Law.

**Art. 6.11 Operation Without Payment of Tax**

If any person shall knowingly operate any motor vehicle, such as defined in this Chapter, upon the highways of this State without the tax thereon having been paid as herein levied and provided, he shall be deemed guilty of a misdemeanor and punished by a fine of not less than Ten Dollars (\$10) nor more than Five Hundred Dollars (\$500), or confined in the county jail for not less than one (1) day nor more than thirty (30) days or by both such fine and imprisonment.

**Art. 6.12 Penalty for Not Keeping Records**

If any seller shall not keep and retain complete records for the space of two (2) years as provided in Article 6.08(2) he shall be deemed guilty of a misdemeanor and punished by a fine of not less than Twenty-five Dollars (\$25) nor more than Five Hundred Dollars (\$500).

**CHAPTER 7****CIGARETTE TAX LAW****Art.**

- 7.01 Definitions
- 7.02 Rate of Tax
- 7.03 Sales by Post, Camp or Unit Exchange Not to be Taxed
- 7.04 Tax in Lieu of Other Occupation or Excise Tax
- 7.05 Sale of Stamps
- 7.06 Additional Tax
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- 7.08 Authority of Comptroller
- 7.09 Distributors, Wholesalers, Retail Dealers
- 7.10 Possession of Unstamped Cigarettes
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## Art.

- 7.13 Records of Cigarettes
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- 7.16 Solicitor's Permit, Penalty
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- 7.18 Suit for Tax, Evidence
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- 7.35 Duties of Comptroller, Rules and Regulations
- 7.36 Penalties
- 7.37 Penalties
- 7.38 Counterfeit Stamps
- 7.39 Enforcement Fund
- 7.40 Supervision of Stamp Procurement
- 7.41 Nature of Tax

**Art. 7.01 Definitions**

The following words, terms, and phrases, as used in this Chapter are hereby defined as follows:

(1) "Cigarette" shall mean and include any roll for smoking made wholly or in part of tobacco irrespective of size or shape and irrespective of tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or other material than tobacco, and the main stream of smoke of a cigarette shall be of acid reaction to litmus paper. This definition shall not include cigars.

(2) "Individual Package of Cigarettes" shall mean and include the smallest package of cigarettes ordinarily sold at retail and shall include any and every package of cigarettes upon which a federal tax is due.

(3) "Person" shall mean and include every individual, firm, association, joint stock company, syndicate, co-partnership, corporation, trustee, agency or receiver.

(4) "Place of Business" is construed to mean and include any place where cigarettes are sold or where cigarettes are stored or kept for the purpose of sale or consumption; or if sold from any vehicle, train or cigarette vending machine, the vehicle, train or cigarette vending machine on which or from which such cigarettes are sold shall constitute a place of business.

(5) "Stamp" shall mean the stamp or stamps printed, manufactured or made by authority of the Comptroller and issued, sold or circulated by the Treasurer and by the use of which the tax levied hereunder is paid.

(6) "Counterfeit Stamp" shall mean any stamp, label, print, tag or token which evidences, or purports to evidence, the payment of any tax levied by this Chapter, and which stamp, label, print, tag or token has not been printed, manufactured or made by authority of the Comptroller and/or issued, sold or circulated by the Treasurer.

(7) "Previously Used Stamp" shall mean and include any stamp which is used, sold, or possessed for the purpose of sale or use, to evidence the payment of the tax herein imposed on an individual package of cigarettes after said stamp has, anterior to such use, sale or possession, been used on a previous or separate individual package of cigarettes to evidence the payment of tax as aforesaid.

(8) "First Sale" shall mean and include the first sale or distribution of cigarettes in intrastate commerce, or the first use or consumption of cigarettes within this State.

(9) "Drop Shipment" shall mean and include any delivery of cigarettes received by any person within this State when payment for such cigarettes is made to the shipper or seller by or through a person other than the consignee.

(10) "Comptroller" shall mean the Comptroller of Public Accounts of the State of Texas or his duly authorized assistants and employees.

(11) "Treasurer" shall mean the State Treasurer of Texas or his duly authorized assistants and employees.

(12) "Attorney General" shall mean the Attorney General of the State of Texas or his duly authorized assistants and employees.

(13) "Distributor" shall mean and include every person in this State who manufactures or produces cigarettes or who ships, transports, or imports into this State or in any manner acquires or possesses cigarettes and makes a "first sale" of the same in this State; and said term shall also include every person in this State who in any manner acquires or possesses unstamped cigarettes for the purpose of making a "first sale" of the same within this State.

(14) "Wholesale Dealer" shall mean and include every "person" other than a distributor or a salesman in the employ of a manufacturer and handling only the products of his employer who engages in the business of selling or distributing cigarettes in this State for the purpose of resale.

(15) "Retail Dealer" shall mean and include every person other than a distributor or wholesale dealer who shall sell, distribute, or offer for sale or distribution or possess for the purpose of sale or distribution, cigarettes irrespective of quantity or amount or the number of sales or distributions; and it shall also mean and include every person other than a distributor or wholesale dealer who distributes or disposes of cigarettes in unbroken individual packages or in quantities of ten (10) or more as gifts or prizes or in any other manner of distribution or disposal where no sale is involved.

(16) "Distributing Agent" shall mean and include every person in this State who acts as an agent of any person outside the State by receiving cigarettes in interstate commerce and storing such cigarettes subject to distribution or delivery upon order from said person outside the State to distributors, wholesale dealers and retail dealers.

#### Art. 7.02 Rate of Tax

(1) A tax of Two Dollars (\$2) per thousand on cigarettes weighing not more than three (3) pounds per thousand and Four Dollars and Ten Cents

(\$4.10) per thousand on those weighing more than three (3) pounds per thousand is hereby imposed on all cigarettes used or otherwise disposed of in this State for any purpose whatsoever. The said tax shall be paid only once by the person making the "first sale" in this State and shall become due and payable as soon as such cigarettes are subject to a first sale in Texas, it being intended to impose the tax as soon as such cigarettes are received by any person in Texas for the purpose of making a "first sale" of same. No person, however, shall be required to pay a tax on cigarettes brought into this State on or about his person in quantities of forty (40) cigarettes or less when such cigarettes have had the individual packages or the seals thereof broken and when such cigarettes are actually used by said person and not sold or offered for sale.

(2) Payment of such tax shall be evidenced by stamps purchased from the Treasurer and securely affixed to each individual package of cigarettes covering the tax thereon as imposed by this Chapter; provided that such stamps may be purchased and affixed to such individual packages of cigarettes by a manufacturer of cigarettes outside this State, in which case no further payment of tax shall be required; provided, further, that such stamps shall not be required to be purchased and affixed to sample packages of cigarettes containing no more than five (5) cigarettes per package when the manufacturer of the cigarette reports and pays the said tax thereon directly to the State.

#### **Art. 7.03 Sales by Post, Camp or Unit Exchange Not to Be Taxed**

(1) Post, Camp, or Unit Exchanges established and operated within the State of Texas, by the United States Military, Naval, or Marine forces and not otherwise, on Military, Naval or Marine Posts; Camps, or Reservations, including any locality within this State where a cantonment camp is located and erected, where officers, soldiers, sailors, nurses, or marines of the United States Army, Navy, or Marine Corps are being trained, are hereby declared to be, and are recognized only for such tax purposes as are hereinafter set out, instrumentalities and agencies of the United States Government.

(2) It is further provided that the provisions of this law shall extend to and apply to any authorized branch of a Post, Camp, or Unit Exchange which may be established for the exclusive benefit of the officers, soldiers, sailors, nurses, or marines in the Army, Navy, or Marine Corps of the United States at any time that said officers, soldiers, sailors, nurses, or marines shall be on authorized military maneuvers. It being the express intent of the Legislature by this Act to allow soldiers, sailors, nurses and marines in the Army, Navy and Marine Corps of the United States, and no others, to purchase cigarettes for their exclusive use and not otherwise, from said Camp, Unit, or Post Exchange, and to consume or smoke the same without paying the tax imposed upon cigarettes used or otherwise disposed of in this State by Section 2, Chapter 241, Acts of the Regular Session of the 44th Legislature, as amended. It is also expressly provided that this law shall not be construed as authorizing any civilian employee of the United States Government or any person or persons whomsoever, other than officers, soldiers, sailors, nurses and marines of the Army, Navy or Marine Corps to purchase cigarettes free of the State Tax from a Camp, Unit, or Post Exchange, or on authorized military maneuvers or to use, consume or smoke said cigarettes without paying the State Tax as provided by the said law cited hereinabove.

All persons, except officers, soldiers, sailors, nurses or marines shall be subject to the tax imposed upon the use of cigarettes by the said Sec-

tion 2, Chapter 241, as amended, Acts of the Regular Session of the 44th Legislature, and no officer, soldier, sailor, nurse or marine or person shall sell or furnish cigarettes upon which the State Tax has not been paid to any civilian employee of the United States Government or to any person or persons other than officers, soldiers, sailors, nurses and marines serving as such in the Army, Navy or Marine Corps of the United States. Provided, further, that no civilian employee of the United States Government or other person whomsoever, except such officers, soldiers, sailors, nurses or marines shall purchase or receive cigarettes without the State Tax Stamp being affixed to the package to evidence the payment of the tax levied by law from any such Post, Camp or Unit Exchange, or shall use or consume cigarettes upon which said tax has not been paid to the State and the possession by any said civilian employee of the United States Government or person other than said officers, soldiers, sailors, nurses and marines of cigarettes without the State Tax Stamp affixed to the package at any place in the State of Texas shall be a violation of this Act and shall be prima facie evidence that such cigarettes are possessed for the purpose of sale or use without payment of the tax levied by law.

(3) It is further provided that no officers, soldiers, sailors, nurses or marines, in the Army, Navy, or Marine Corps of the United States shall remove from the confines of any military or naval post or reservation in this State, cigarettes without the State Tax Stamp affixed to the package in quantities of more than forty (40) cigarettes or shall resell, distribute or furnish cigarettes without the State Tax Stamp affixed to the package to any person, persons, firm or corporation not authorized to use or consume the same without the State Tax having been paid thereon. Any person, firm, or corporation who knowingly removes from such reservations any cigarettes or sells, furnishes, purchases, or receives any cigarettes in violation of this provision shall be subject to the penalties provided in this law. The possession of more than forty (40) cigarettes by any said officers, soldiers, sailors, nurses or marines without the State Tax Stamp affixed to the package at any place in Texas other than a military or naval post or reservation shall be a violation of this Act and shall be prima facie evidence that such cigarettes are possessed for the purpose of a sale in Texas without the State Tax Stamps affixed.

(4) It is further recognized, declared and provided that the provision of Section 2, Chapter 241, Acts of the Regular Session of the 44th Legislature, as amended by Senate Bill No. 247, Chapter 310, Acts of Regular Session of the 45th Legislature, relating to "first sale" of cigarettes does not apply to sales by such Post, Camp, or Unit Exchanges to officers, soldiers, sailors, nurses and marines of the Army, Navy and Marine Corps under the conditions specified in the preceding sections of this law or to sales in accordance with such specified conditions and for such resale purposes to such Post, Camp, or Unit Exchanges by a licensed cigarette distributor in Texas.

(5) Any person, firm, or corporation violating any of the provisions of this Chapter shall be guilty of a misdemeanor and shall be punished by a fine of not less than Twenty-five Dollars (\$25.00) nor more than Two Hundred Dollars (\$200.00). Each violation of any of the provisions of this Chapter shall be considered a separate offense.

#### Art. 7.04 Tax in Lieu of Other Occupation or Excise Tax

Provided that the taxes imposed by this Chapter shall be in lieu of any other occupation or excise tax imposed by the State or by any political subdivision of the State on cigarettes.

**Art. 7.05 Sale of Stamps**

Cigarette stamps shall be sold by the Treasurer in unbroken sheets of one hundred (100) stamps only and shall be purchased from and sold only by said Treasurer, except as hereinafter provided. When the Comptroller deems it proper to accept the compromise provided for herein, and the offender does not possess sufficient unused stamps to cover his unstamped stock of cigarettes, then and in that event the offender may purchase the required stamps from any distributor through a requisition from the Comptroller in order that his unstamped stock of cigarettes may be stamped immediately and under the direction of the Comptroller and the Comptroller shall have the authority to issue such requisition which shall be made in triplicate on a form prescribed by the Comptroller with the printed words "Original," "Duplicate," and "Triplicate," on the respective sheets thereof. The original requisition shall be kept by the Comptroller and the duplicate and triplicate shall be delivered to the purchaser and seller of said stamps, respectively, who shall hold such copies of requisition at all times open to the inspection of the Comptroller and the Attorney General for a period of two (2) years. The Comptroller shall have the power and authority in the enforcement of this Chapter to recall any stamps which have been sold by said Treasurer which have not been used and it shall be the duty of said Treasurer upon receipt of such recalled stamps to issue stamps of other serial numbers therefor. The purchaser of any stamps shall be required to surrender any unused stamps for exchange upon demand of said Comptroller.

**Art. 7.06 Additional Tax**

(1) In addition to the tax levied by Art. 7.02 herein, there is hereby imposed a tax of Two Dollars (\$2.00) per thousand on cigarettes weighing not more than three (3) pounds per thousand and Two Dollars (\$2.00) per thousand on those weighing more than three (3) pounds per thousand on all cigarettes used or otherwise disposed of in this State for any purpose whatsoever. The said tax shall be paid only once by the person making the "first sale" in this State and shall become due and payable as soon as such cigarettes are subject to a "first sale" in Texas, it being intended to impose the tax as soon as such cigarettes are received by any person in Texas for the purpose of making a "first sale" of same. No person, however, shall be required to pay a tax on cigarettes brought into this State on or about his person in quantities of forty (40) cigarettes or less when such cigarettes have had the individual packages or the seals thereof broken and when such cigarettes are actually used by said person and not sold or offered for sale.

(2) Payment of such tax shall be evidenced by stamps purchased from the Treasurer and securely affixed to each individual package of cigarettes covering the tax thereon as imposed by this Chapter; provided that such stamps may be purchased and affixed to such individual packages of cigarettes by a manufacturer of cigarettes outside this State, in which case no further payment of tax shall be required; provided, further, that such stamps shall not be required to be purchased and affixed to sample packages of cigarettes containing no more than five (5) cigarettes per package, when the manufacturer of the cigarettes reports and pays the said tax thereon directly to the State.

(3) The net revenue derived from the tax levied under this Article shall be credited to the General Fund of this State. Provided, no portion of the revenues derived under this article shall be set aside to any fund for the administration and enforcement of the cigarette tax law of this

State. Provided, further, the net revenues collected under this Article may be credited daily to the Omnibus Clearance Fund hereafter referred to in this Act and on the first day of each month following the collection of the net revenues derived under this Article, the said net revenues shall be credited to the General Fund, except that the net revenues derived under this Article during the month of August of each year shall be credited to the General Fund on the thirty-first day of August of each year; it being specifically understood that no portion of the said net revenues of this Article shall remain or be distributed under the provisions governing the said Clearance Fund.

#### Art. 7.07 Stamp Meters

The Comptroller is empowered to authorize licensed cigarette distributors to impress on or attach to each package of cigarettes, evidence of tax payments, by means of a stamp metering machine. The Comptroller shall adopt rules and regulations relating to the imprinting of such tax meter stamps as will result in payment of the proper taxes herein imposed. No distributor shall affix revenue tax stamps to original packages of cigarettes by imprinting tax meter stamps thereon unless such distributor has first obtained permission from the Comptroller to employ this method of affixation. The Comptroller shall regulate the use of tax meters and may, to assure the proper collection of the taxes imposed by this Chapter, revoke or suspend the privilege, theretofore granted by the Comptroller to any distributor, without previous notice, to imprint tax meter stamps upon original packages of cigarettes; and provided that all distributors of cigarettes using meter stamping machines shall submit their request for settings on forms to be furnished by the Treasurer of the State of Texas. Distributors must forward their meters, at the expense of the distributor, direct to the State Treasurer, Austin, Texas, for setting, accompanied by proper remittance as required. The meter will then be set and returned, insurance and shipping cost collect upon delivery. The State Treasurer will retain the key to the meter and the seal on said meter may be broken or removed only by the State Treasurer. All requests for meter settings shall be in units of one hundred (100) and must not exceed ninety-nine thousand, nine hundred (99,900).

#### Art. 7.08 Authority of Comptroller

(1) The Comptroller shall design and have printed or manufactured new cigarette tax stamps of such size and denomination and in such quantities as may be determined by the Comptroller. The stamps shall be so manufactured as to render them easy to be securely attached to each individual package of cigarettes; provided that a different and separate serial number or combination letter and number may be assigned to and printed on the margin of each sheet of stamps, or other methods of identification be adopted as the Comptroller may decide. The printing or manufacturing of the stamps shall be awarded by competitive bid and the contract shall be awarded to the person submitting the lowest and best bid that will afford the greatest and best protection to the State in the enforcement of the provisions of this Act.

(2) The Comptroller, acting through the Treasurer, shall, upon receipt of the stamps hereinabove authorized to be printed or manufactured, designate the date of issue of the new design of stamps by issuing a proclamation as hereinafter provided. Provided that the stamps shall be affixed by the distributor on each individual package of cigarettes that will be handled, sold, distributed, or used; that said stamps shall be supplied by said Treasurer to all distributors holding a permit at a discount of  $2\frac{1}{4}$

per cent of the face value; provided, that no discount shall be allowed to out-of-state purchasers residing in the states that do not give discounts on cigarette tax stamps purchased from said states by Texas cigarette distributors; provided that if any distributor fails or refuses to comply with any provision of the cigarette tax law or violates the same, such distributor shall be required to pay the full face value for stamps purchased during the period of such offense and the Treasurer shall, upon receipt of an affidavit from the Comptroller setting forth such violation, refuse to supply stamps at the discount provided until such offending distributor has paid any unauthorized discounts received by him and has otherwise purged himself of all such violations; provided further, that every distributor shall cause to be affixed to every individual package of cigarettes on which a tax is due, stamps of an amount equaling the tax due thereon, before any such distributor sells, offers for sale, or consumes, or otherwise distributes or transports the same.

(3) The State Treasurer is hereby required to redeem at face value any unused cigarette tax stamps lawfully issued prior to such change in denomination and in the possession of any bona fide owner, by exchanging at face value cigarette tax stamps for cigarette tax stamps of the new denomination. After the effective date of this Chapter, every person having in his possession stamps of the old denomination shall send them to the Treasurer for exchange at face value for stamps of the new denomination. Such exchange shall be made within sixty (60) days after the effective date of this Act, and it shall be unlawful for any person to have in his possession any stamps of the old denomination after the expiration of sixty (60) days from the effective date of this Chapter. It shall further be unlawful for any person to sell, offer for sale, or possess for the purpose of sale, cigarettes to which stamps of the old denomination are affixed. After the expiration of sixty (60) days from the effective date of this Chapter, stamps of the old denomination shall be void, provided, that stamps removed from cigarettes determined by the Comptroller to be unsaleable may be redeemed under rules and regulations promulgated or hereafter promulgated by the Comptroller. Every retail dealer and wholesale dealer having cigarettes to which stamps of the old denomination are affixed in his stock in quantities of two thousand (2,000) or more on the effective date of this Chapter shall immediately inventory the same and file a report of such inventory to the Comptroller and attach to such inventory a cashier's check payable to the State Treasurer in a sum equal to the amount of additional tax due on such cigarettes computed at the new rate provided in this Chapter. Such retail dealer or wholesale dealer shall retain as a receipt to evidence payment of the tax a purchaser's copy of the cashier's check and shall retain a copy of the inventory reported to the Comptroller. Failure or refusal to render such inventory shall be deemed sufficient grounds for the cancellation of any permit issued under this Chapter, and in addition thereto, any retail or wholesale dealer failing or refusing to render such inventory shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than One Hundred Dollars (\$100) nor more than One Thousand Dollars (\$1,000).

(4) The Comptroller is hereby authorized to change the design of the stamp as often as he may deem such change necessary to the best enforcement of the provisions of this Chapter, and the Treasurer is hereby required to redeem at face value any unused cigarette tax stamps lawfully issued, prior to such change in the design, which are in the possession of any bona fide owner, by exchanging at face value cigarette tax stamps of the new design. Provided, that whenever a change is made in the design



of the stamps every person holding stamps of the old design shall be required to send them to the Treasurer for exchange at face value for stamps of the new design. Such exchange shall be made within sixty (60) days after the date of the issue of the new design of stamps and it shall be unlawful for any person to have in his possession any stamps of an old design after sixty (60) days from the date of issue of a new design; provided, it shall be unlawful for any person to sell, offer for sale, or possess for the purpose of sale cigarettes to which stamps of the old design are affixed after sixty (60) days from the date of issue of a new design; provided further, that after sixty (60) days from the date of issue of any new design of stamps the old design shall be void and cigarettes with stamps of the old design affixed to the individual package shall, for the purposes of the enforcement of the provisions of this Chapter, be considered as cigarettes without stamps affixed thereto. It shall be the duty of the Treasurer upon receipt of any new design of stamps authorized to be printed by the Comptroller to designate the date of issue of such new design by the issuance of a proclamation and the date of such proclamation shall be the date of issue of the new design of stamps.

Any person who shall have in his possession any cigarette tax stamps of the old design after sixty (60) days from the date of issue of a new design of stamps shall be guilty of a felony and shall be punished as set out in Article 7.37 of this Chapter.

(5) Provided that any cigarette tax stamps may be exchanged only when proof satisfactory to said Treasurer is furnished that any stamps offered to said Treasurer in exchange were properly purchased and paid for by the person offering to exchange such stamps; provided, further, that stamps which are effaced or mutilated in any manner may be refused for acceptance in exchange by said Treasurer.

The Treasurer shall keep a record of all stamps sold by him or under his direction, of all stamps exchanged by him and of all refunds made on any stamps purchased.

(6) Orders for cigarette tax stamps shall be sent direct to the Treasurer and it shall be the duty of the Treasurer to invoice the stamps ordered to the purchaser upon a form invoice to be prescribed by the Treasurer, which invoice shall be issued in triplicate and numbered consecutively. The invoice shall show the date of sale, the name and address of the purchaser, the number of stamps and their serial numbers, the denomination and value of stamps so purchased. The invoice shall be signed by the Treasurer and the original sent with stamps to the purchaser; the duplicate of the invoice shall be sent to the Comptroller and the triplicate kept by the Treasurer; provided, further, that the purchaser of said stamps shall hold the said invoice for a period of two (2) years for inspection at all times by the Comptroller and the Attorney General. No stamp affixed to a package of cigarettes shall be cancelled by any letter, numeral or any other mark of identification or otherwise mutilated in any manner that will prevent or hinder the Comptroller in making an examination as to the genuineness of said stamps.

(7) Stamps in unbroken sheets of one hundred (100) stamps may be exchanged, with the Treasurer only, for stamps of a different denomination. Provided, further, that the Treasurer shall be authorized to make refunds on unused stamps in unbroken sheets of not less than one hundred (100) stamps each to the person who purchased said stamps only when proof satisfactory to said Treasurer is furnished that any stamps upon which a refund is requested were properly purchased from said Treasurer and paid for by the person requesting such refund. Such refund shall be made from revenue derived from this Act before such reve-

nue is allocated as herein provided. The Comptroller shall have full power and authority over obsolete cigarette stamps, and the responsibility for burning said stamps is placed upon the Comptroller. Appropriations out of Cigarette Tax Enforcement Fund (No. 66) heretofore made to the State Board of Control for the purpose of paying the salary of the supervisor and for the purchase of cigarette stamps shall hereafter be made to the Comptroller of Public Accounts, Cigarette Tax Division.

(8) A distributor may order stamps shipped with draft attached to the bank with which said distributor regularly transacts business. The Treasurer is hereby authorized to ship stamps in compliance with such orders to any such bank authorized to do business in Texas under the laws of this State and the United States. Such stamps, together with the invoice required under Article 7.08, Subsection (6) of this Chapter, shall be attached to a form draft to be prescribed by the State Auditor, which draft shall show the date of shipment, the name and address of the bank, the name of the distributor and the amount of said draft. If said draft is not paid within twenty (20) days of the date thereon, it shall be returned together with the stamps attached to the Treasurer. Any distributor failing to take up such draft and stamps as ordered by him shall be notified at the end of such twenty-day period by the Treasurer to appear within five (5) days before the Treasurer to show cause why he should not be denied the privilege of ordering stamps as herein provided, and if such distributor shall fail to show good cause, the Treasurer is hereby authorized to discontinue the shipment of stamps with draft attached as herein provided.

(9) The State Treasurer shall require that payment in full for stamps or meter settings be made within fifteen (15) days from the date the stamps or the set meter are received by the distributor. Upon receipt of an order for stamps or the setting of a meter, the State Treasurer shall ship such stamps or set such meter in compliance with the order and transmit with the stamps or the meter a certified statement showing the amount due for said stamps or meter setting, and the distributor shall forward a remittance as payment in full of the amount certified as due by the State Treasurer within fifteen (15) days after receipt of the stamps or the set meter and the certified statement. Any distributor who fails to forward the proper remittance within fifteen (15) days after receipt of the stamps or the set meter and the certified statement shall be notified by the State Treasurer within five (5) days after the end of the fifteen-day period to appear within five (5) days before the Treasurer to show cause why he should not be denied the privilege of ordering stamps as herein provided, and if such distributor shall fail to show good cause, the Treasurer is hereby authorized to discontinue the shipment of stamps or the setting of meters as provided in this Section.

#### **Art. 7.09 Distributors, Wholesalers, Retail Dealers**

Every distributor, wholesale dealer and retail dealer in this State now engaged or who desires to become engaged, in the sale or use of cigarettes upon which a tax is required to be paid, shall, within thirty (30) days from the date this law becomes effective, file with the Comptroller an application for a cigarette permit as a distributor, wholesale dealer or retail dealer, as the case may be, said application to be accompanied by a fee of Twenty-five Dollars (\$25.00) if for a distributor's permit, or a fee of Fifteen Dollars (\$15.00) if for a wholesale dealer's permit, or a fee of Five Dollars (\$5.00) if for a retail dealer's permit. Coin-operated cigarette or tobacco products vending machines shall be issued a retail dealer's permit. Said applications shall be on forms prescribed by the

Comptroller, to be furnished upon written request, the failure to furnish which shall be no excuse for the failure to file the same unless an absolute refusal is shown. Said forms shall set forth: (a) the manner under which such distributor, wholesale dealer or retail dealer transacts or intends to transact such business as distributor, wholesale dealer or retail dealer; (b) the principal office, residence and place of business in Texas for which the permit is to apply; (c) and if other than an individual, the principal officers or members thereof not to exceed three (3), and their addresses. The Comptroller may require any other information as he may desire in said applications. No distributor, wholesale dealer or retail dealer shall sell any cigarettes until such application has been filed and the fee prescribed paid for a permit and until such permit is obtained. Said permits shall expire on the last day of February of each year, but may be renewed upon like application and upon payment of another fee in the amount prescribed for the kind of permit desired. An application shall be filed and a permit obtained for each place of business owned or operated by a distributor, wholesale dealer or retail dealer. Provided, however, that any distributor manufacturing, importing, or acquiring in any manner, cigarettes for his own personal use or consumption and not to be disposed of by sale, gift, or otherwise shall not be required to obtain a distributor's permit but shall be required to make the report required herein of a distributor and to comply with all other provisions of this Act affecting a distributor; provided, further, that the Treasurer shall be authorized to sell stamps to such distributors acquiring cigarettes for their own personal use or consumption and not for sale or other disposal, in lesser quantities than unbroken sheets of one hundred (100) stamps.

Upon receipt of the application and fee herein provided for, the Comptroller shall issue to every distributor, wholesale dealer or retail dealer for the place of business designated, a non-assignable consecutively numbered permit, designating the kind of permit and authorizing the sale of cigarettes in this State. Said permit shall provide that the same is revocable and shall be forfeited or suspended upon any violation of any provisions of this Act or any reasonable rule or regulation adopted by the Comptroller. If such permit is revoked or suspended said distributor, wholesale dealer or retail dealer shall not sell any cigarettes from such place of business until a new permit is granted or the suspension of the old permit removed. Provided, that the Treasurer may refuse to sell stamps to any person who has not obtained a permit to engage in business as a distributor or to any distributor whose permit has been revoked or suspended until such permit has been reinstated or a new permit issued.

The permit shall at all times be publicly displayed by the distributor, wholesale dealer or retail dealer at his place of business so as to be easily seen by the public and the persons authorized to inspect the same. Provided, that any distributor, wholesale dealer, or retail dealer who is the legal owner and holder and is operating under any unexpired permit which has been issued by the Comptroller as provided by Chapter 241, Acts of the Regular Session of the Forty-fourth Legislature, as amended, shall not be required to make application for and obtain from a Comptroller a permit as required herein prior to the expiration of the twelve (12) months for which such permit was issued. Provided, further, that any person who operates both as a distributor and wholesale dealer in the same place of business shall only be required to obtain a distributor's permit for the particular place of business where such operation of said business is conducted, but if any distributor or wholesale dealer sells cigarettes at both wholesale and retail, an additional permit as a retail dealer shall be required. Any unexpired permit may be returned to the

Comptroller for credit on the unexpired portion only upon the purchase of a permit of a higher classification.

If the application is for a permit to sell cigarettes from or by means of a cigarette vending machine, train, automobile or other vehicle, the serial number of said vending machine, the make and motor number and State Highway license number of said automobile or other vehicle and the name of the railway company and number of said train shall be shown on the application.

#### **Art. 7.10 Possession of Unstamped Cigarettes**

Every person, other than a distributing agent, bonded distributor, or common carrier, shall before receiving or accepting delivery of any cigarettes without stamps affixed to evidence the payment of the tax, obtain from the Treasurer the requisite amount or number of stamps necessary to stamp such cigarettes and the possession of any unstamped cigarettes without the possession of the requisite amount or number of stamps shall be prima facie evidence that said cigarettes are possessed for the purpose of making a "first sale" thereof without stamps and without payment of the tax levied herein.

Every distributor in this State shall cause all cigarettes received by him to have the requisite denominations and amount of stamps affixed to represent the tax as levied herein; provided, however, that any distributor who has obtained from the Treasurer and has, in his possession the requisite amount and number of stamps necessary to stamp all cigarettes received by him may hold such cigarettes for a period of not longer than forty-eight (48) hours, excluding Sundays and legal holidays, before affixing the stamps as required herein.

#### **Art. 7.11 Distributor, Bond**

Any distributor or other person engaged in interstate business who shall, within thirty (30) days from the date this law becomes effective, execute and file with the Comptroller a good and sufficient surety bond signed by the distributor or other person and a good and sufficient surety company or companies authorized to do business in this State shall be permitted to set aside such part of his stock of cigarettes as may be necessary for the conduct of such interstate business without affixing the stamps required by this Act. Provided, that such bond shall be approved by and acceptable to the Comptroller in an amount of not less than Two Hundred and Fifty (\$250.00) Dollars and not more than double an amount necessary to stamp the largest quantity of cigarettes set aside at any time for the conduct of such business, and any quantity so set aside which is larger than that permitted in said bond shall be subject to the same requirements as cigarettes purchased or possessed for intrastate sale. Said interstate stock shall be kept in an entirely separate part of the building, separate and apart from stamped stock. The amount of the bond required of such distributor or other person shall be fixed by the Comptroller, and subject to the minimum limitation herein provided; additional bond or a new bond shall be required by the Comptroller at any time an existing bond becomes insufficient or the surety thereon becomes unsatisfactory, which additional bond or new bond shall be supplied within ten (10) days after demand. Provided, that said bond or bonds shall be payable to the State of Texas in Austin, Travis County, Texas, and conditioned for the full, complete and faithful performance of all the conditions and requirements of this Act affecting said distributor or other person on a form to be prescribed by the Comptroller, with the ap-

proval of the Attorney General. Should the distributor or other person fail or refuse to supply a new bond or additional bond within ten (10) days after demand, the Comptroller shall have the power and authority to cancel forthwith any existing bond made and executed by and for said distributor or other person. In the event said bond is cancelled, said distributor or other person shall within forty-eight (48) hours after said cancellation excluding Sundays and legal holidays, cause any and all cigarettes received prior to said cancellation to have the requisite denomination and amount of stamps affixed to represent the tax as herein provided. Cigarettes set aside for interstate business which are not kept entirely separate and apart from intrastate stock shall be considered as intrastate stock and subject to the same requirements as cigarettes possessed for the purpose of a "first sale."

#### **Art. 7.12 Rules and Regulations**

The Comptroller is hereby authorized to prescribe and promulgate rules and regulations not inconsistent with this Act for the purpose of regulating the sale of cigarettes for movement into States adjoining Texas when said cigarettes have the cigarette tax stamp of such adjoining State affixed thereto.

#### **Art. 7.13 Records of Cigarettes**

(1) Every distributor, wholesale dealer and retail dealer shall keep at each place of business in Texas, except as otherwise provided, for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General a complete record of all cigarettes purchased or received by said distributor, wholesale dealer or retail dealer, including all invoices, bills of lading, way bills, freight bills, express receipts or copies thereof and all other shipping records furnished by the carrier and the seller or shipper of said cigarettes, and in addition thereto a book record in a well bound book which will provide complete information on all cigarettes purchased or received by said distributor, wholesale dealer or retail dealer at each place of business. Such book record shall show the date said cigarettes were received, with the designation of whether drop-shipment or otherwise, the name and address of the person from whom purchased and from whom received, the point from which shipped or delivered, the point at which received, the name of the carrier, if shipped by common carrier, the name of the boat or barge if shipped by water, whether registered mail, insured parcel post or open mail if received by mail, the number and kind of cigarettes received with stamps affixed thereto, and, if a distributor, the number and kind of cigarettes received without the stamps affixed, and an inventory or inventories on the first of each month, showing the number and kind of cigarettes on hand with stamps affixed thereto, and, if a distributor, the number and kind without stamps affixed.

#### **Art. 7.14 Stamp Records, Sales Records**

(1) Every distributor shall keep at each place of business in Texas, except as otherwise provided, for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General the invoice of stamps purchased or received from the Treasurer and in addition thereto a book record in a well bound book which will provide complete information of all stamps purchased from the Treasurer and the disposition thereof. Such record shall show the date of receipt of stamps purchased, the number or quantity of stamps, the denomination, and

amount paid for stamps so purchased. Such record shall also show the number or quantity, the denomination and face value of stamps sold by requisition from the Comptroller with the name of purchaser of said requisitioned stamps, the number or quantity, the denomination and face value of stamps sent to or received from the Treasurer as an exchange and the inventory or inventories of all stamps on hand on the first day of each month, said inventory to show the number or quantity, denominations and face value of said stamps.

(2) Every distributor and wholesale dealer shall keep at each place of business in Texas, except as otherwise provided, for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General a complete record of each and every sale, distribution or use of cigarettes, regardless of whether or not the tax is due upon said cigarettes under the provisions of this Chapter, upon an invoice to be furnished by said distributor or wholesale dealer which invoice shall be issued in duplicate except when the sale or distribution is made by drop-shipment in which event the invoice shall be issued in triplicate, said invoice shall show the date of sale, distribution or use, the purchaser and his address, the means of delivery, the name of the carrier if delivered by common carrier, whether registered mail, insured parcel post or open mail if delivered through the mail, the designation of drop-shipment if the sale is a drop-shipment made by a distributor, the number and kind of cigarettes sold, and if the sale is by a distributor, the number and kind of cigarettes with the stamps affixed to each individual package, and the number and kind of cigarettes without the stamps affixed thereto, and in addition thereto, the said invoices shall be supported by the receipts and other records furnished by the carrier of such cigarettes. The original of said invoice shall be delivered to the purchaser and the duplicate shall be kept by the distributor or wholesale dealer as the case may be; provided, however, that when the cigarettes are distributed or exchanged in any manner where no sale is involved that an explanation of such transaction shall be stated on said invoice. Provided further, that where a distributor or wholesale dealer sells cigarettes at retail it will be sufficient for said distributor or wholesale dealer and he shall be required to issue an invoice to his retail department for cigarettes to be sold at retail and such stock of cigarettes invoiced for retail sales shall be kept separate and apart from the other stock of said distributor or wholesale dealer; provided, further, that every distributor and wholesale dealer shall keep at each place of business in Texas for a period of two (2) years for the inspection at all times by the authorized authorities a book record in a well bound book or books of all cigarettes sold, distributed or used by said distributor or wholesale dealer. Such book record shall include all information required to be kept on the invoice aforesaid.

(3) Provided, that every person engaged in the business of selling cigarettes in interstate commerce only shall be required to keep such records and make such reports to the Comptroller as are required of a distributor.

(4) Salesmen in the employ of a manufacturer, and handling only the products of his employer, who engage in the business of selling or distributing cigarettes with stamps affixed in this State for the purpose of resale, shall be required to keep the same records, for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General, as are required of a wholesale dealer. Such salesmen shall also be required to deliver the original of the invoice required to be made to the purchaser or recipient of said cigarettes.

(5) "Solicitors" engaged in the business of soliciting orders for cigarettes for shipment to points within this State shall keep in Texas for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General a complete record of all orders solicited and all orders taken for cigarettes for such shipments which record shall include the quantity and kind of cigarettes ordered or shipped, from whom ordered or by whom shipped, the full name and correct address of the purchaser; the date said cigarettes were ordered, and if available the date said cigarettes were shipped. Such record shall be kept for all cigarettes shipped to points within this State by the vendor whom the solicitor represents whether the order was taken by said solicitor or otherwise if said solicitor is given credit for or furnished records of such orders or such shipments.

#### Art. 7.15 State to Have Preferred Lien

All taxes, penalties, and cost of auditing, as hereinafter provided, due, or that might become due by any distributor to the State shall be and become a preferred lien, first and prior to any and all other existing liens, contract or statutory, legal or equitable, and regardless of the time such lien originated upon all the property of any distributor, devoted to or used in his business as distributor, which property shall include manufacturing plants, storage plants, warehouses, office building and equipment, trucks, cars or other motor vehicles or any other equipment devoted to such use and each tract of land on which such manufacturing plant, storage plant, warehouse, office building or other property is located, and other tangible property which is used in carrying on such business and in addition thereto any and all cigarettes and stamps of said distributor. If any distributor shall fail to pay any taxes and penalties due the State in the proper manner provided for such payment the Comptroller may employ auditors or other persons to ascertain the correct amount due, and if such taxes have not been properly paid the distributor shall pay the reasonable expenses incurred in such investigation and audit as additional penalty. Provided, however, that all funds paid to the auditors of the Comptroller as expenses incurred in making audits, shall be placed in a special fund in the State Treasury, which shall be used until exhausted, for making other audits, and said sums are hereby appropriated for that purpose. Provided that nothing herein shall prevent the Comptroller, when said fund is exhausted, from using other funds available for that purpose.

#### Art. 7.16 Solicitor's Permit, Penalty

(1) No individual shall offer for sale or solicit any order in this State for the sale of any cigarettes for shipment to points within this State, for his own account or for the account of any person, firm, association or corporation, unless and until such person or individual shall have first filed an application for and obtained from the State Comptroller a solicitor's permit. Such permit shall authorize the permittee to solicit orders for the sale of cigarettes and shall set forth the name and address of the vendor and/or employers whom the solicitor represents, and such solicitor shall not represent any vendor and/or employers whose name does not appear upon such permit. The fee for such permit shall be One Dollar (\$1), and the permit shall expire on the last day of February of each year, but may be renewed upon like application and upon payment of another fee in the amount set out above. Such permittee shall, on the fifth (5th) day of each month, file with the Comptroller, on proper forms to be supplied him by said official, copies of all orders solicited by him in the

State during the preceding calendar month for cigarettes, said copies to show the quantity and kind of cigarettes ordered, by whom ordered, from what person, firm or corporation ordered, the full name and correct address of purchaser, the date said cigarettes were ordered and any other information which may be required by the Comptroller; and the failure of such permittee to comply with the provisions hereof shall subject him to the forfeiture of his permit, after five (5) days notice and opportunity to be heard by the Comptroller of Public Accounts. No new permit shall be issued for a period of one (1) year to anyone whose permit has been forfeited, except in the discretion of the Comptroller.

(2) If any person shall offer for sale or solicit any order in this State for the sale of cigarettes for shipment to a point within the State, without then and there having a valid solicitor's permit, he shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than Twenty-five (\$25.00) Dollars nor more than Two Hundred (\$200.00) Dollars.

#### **Art. 7.17 Distributor's Report**

Every distributor shall make and deliver to the Comptroller in Austin, Travis County, Texas on the 10th day of each month a report for the preceding calendar month, which report shall be properly sworn to and executed by the distributor, or his representative in charge, and which shall show the date said report was executed, the name and address of said distributor, the month which the report covers, the number of unstamped and the number of stamped cigarettes on hand at the beginning of the month, the number of unstamped and the number of stamped cigarettes purchased and received during the month, the number of unstamped and the number of stamped cigarettes returned from customers or received from any other source, the number of unstamped and the number of stamped cigarettes sold, used, lost, stolen, returned to the factory or disposed of in any other manner and the number of unstamped and the number of stamped cigarettes on hand at the end of the month. Said report shall show separately the number of cigarettes sold or distributed in intrastate commerce and the number sold or distributed in interstate commerce. Said report shall also show the number, denomination and face value of unused stamps on hand at the beginning of the month covered in the report, the number, denomination and face value of stamps purchased and received, the number, denomination and face value of stamps sold, used, lost, stolen, exchanged, returned to the Treasurer, or disposed of in any other manner and the number, denomination and face value of stamps on hand at the end of the month covered in the report. Provided, that said report shall also show separately all drop-shipments handled by or through said distributor during the period reported, which information shall include the date of shipment, the invoice number, the name and address of the consignee, the number and brand of such cigarettes and the means of delivery and a copy or copies of all invoices of such drop-shipments shall be attached to and sent with said report. Provided, further, that the Comptroller may prepare and furnish a form prescribing the order in which the information required herein shall be set up in said report but the failure of any distributor to obtain such form from the Comptroller shall be no excuse for the failure to file a report containing all the information required to be reported herein.

#### **Art. 7.18 Suit for Tax, Evidence**

(1) If any distributor or other person fails or refuses to pay any tax, penalties and cost of audit herein provided, and it becomes necessary to



bring suit or to intervene in any manner for the establishment or collection of said tax claims, in any judicial proceedings, any report filed with the office of the Comptroller by such distributor or his representative, or a certified copy thereof certified to by the Comptroller or his Chief Clerk, showing the number of cigarettes sold by such distributor or his representatives, upon which such tax, penalty and cost of audit has not been paid, or any audit made by the Comptroller or his representative from the books or records of said distributor, or other person when signed and sworn to by such representative as being made from the records of said distributor or persons from whom such distributor has bought, received, or delivered cigarettes, whether from a transportation company or otherwise, such report or audit shall be admissible in evidence in such proceedings and shall be prima facie evidence of the contents thereof; provided, however, that the incorrectness of said report or audit may be shown.

(2) In the event the Attorney General shall file suit or claim for taxes, provided for in the foregoing section, and attach or file as an exhibit any report or audit to said distributor, and an affidavit made by the Comptroller or his representatives that the taxes shown to be due by said report or audit are unpaid, that all payments and credits have been allowed, then, unless the party resisting the same shall file an answer in the same form and manner as required by Article 3736, Revised Civil Statutes of Texas, of 1925, as amended by Chapter 239, Acts of the Regular Session of the Forty-second Legislature, said audit or report shall be taken as prima facie evidence thereof, and the proceedings of said Article are hereby made applicable to suits to collect taxes hereunder.

#### **Art. 7.19 Venue**

Venue of any civil suit, writ of injunction or other civil proceedings filed under the provisions of this Act shall be in a Court of competent jurisdiction in Travis County, Texas, or in the county where the defendant in such proceedings has his domicile.

#### **Art. 7.20 Availability of Records**

Provided that if the place of business of any distributor, wholesale dealer or retail dealer is a vending machine, train, automobile, or other vehicle, such distributor, wholesale dealer or retail dealer, as the case may be, shall be required to designate in the application a permanent place where the records required to be kept for such place of business will be available to the Comptroller, after the stocks are delivered from said vending machine, train, automobile or other vehicle and after such deliveries are made the records shall be kept at the permanent place so designated.

#### **Art. 7.21 Forfeiture or Suspension of Permits**

If any distributor, wholesale dealer or retail dealer has violated any provision of this Act, or any rule and regulation promulgated hereunder, the Comptroller shall have the power and authority to forfeit or suspend the permit or permits of said distributor, wholesale dealer or retail dealer by giving written notice stating the reason justifying such forfeiture or suspension and the same shall be forfeited or suspended five (5) days from the date of said notice. Any notice required to be given by the Comptroller may be mailed to the distributor, wholesale dealer or the retail dealer, as the case may be, at any place designated as the place of business on the application for permit required herein. No new permit

shall be issued within a period of one (1) year to anyone whose permit or permits have been forfeited, except at the discretion of the Comptroller. If any permit is forfeited or suspended no cigarettes shall be sold from the place of business for which said permit applied until a new permit is granted or the suspension of the old permit removed.

#### **Art. 7.22 Allocation of Revenues**

The funds derived from the issuance and sale of the permits to distributors, wholesale and retail dealers as herein provided shall be delivered to the Treasurer, and allocated in the same manner and in the same proportion as the funds derived from sale of stamps.

#### **Art. 7.23 Application for Permits, Issuance, Records, Reports**

(1) Every distributing agent in this State now engaged, or who desires to become engaged in the business of storing unstamped cigarettes previously sold in interstate commerce and received in interstate commerce for distribution or delivery only upon order received from without the State, shall within thirty (30) days from the date this law becomes effective, file with the Comptroller, an application for a distributing agent's permit, on a form prescribed by the Comptroller to be furnished upon written request, the failure to furnish which shall be no excuse for the failure to file the same unless an absolute refusal is shown. Said form shall set forth the name under which such distributing agent transacts or intends to transact such business as a distributing agent, the principal office and place of business in Texas for which the permit is to apply, and if other than an individual, the principal officers or members thereof and their addresses. The Comptroller may require any other information he may desire in said application. No distributing agent shall engage in such business until such application has been filed and the fee of One Hundred Dollars (\$100) paid for the permit and until the permit has been obtained. Said permit shall expire on the last day of February of each year but may be renewed upon like application and upon payment of another fee in the amount set out above. An application shall be filed and a permit obtained for each place of business owned or operated by a distributing agent.

(2) Upon receipt of the application and permit fee herein provided for, the Comptroller shall issue to every distributing agent, for the place of business designated, a nonassignable, consecutively numbered permit, authorizing the storing and distribution of unstamped cigarettes within this State when such distribution is made upon interstate orders only.

(3) Every distributing agent shall keep at each place of business in Texas, except as otherwise provided, for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General, a complete record of all cigarettes received by him, including all orders, invoices, bills of lading, way bills, freight bills, express receipts, and all other shipping records which are furnished to said distributing agent by the carrier and the shipper of said cigarettes, or copies thereof, and in addition thereto, a complete record of each and every distribution or delivery made by said distributing agent, such records of a distribution or delivery shall include all orders, invoices or copies thereof, and all other shipping records furnished by the carrier and the person ordering distribution or delivery of said cigarettes.

(4) Every distributing agent in Texas shall report to the Comptroller, on a form to be prescribed by the Comptroller and furnished by the distributing agent, each day excepting Sundays and holidays, all deliveries of

cigarettes made by him on the preceding day or days. The report shall show the name of the person ordering the delivery, the date of delivery, the name and address of the person to whom delivered, the invoice number, the bill of lading or way bill number, the number and kind of cigarettes delivered, the means of delivery and/or the transportation agent and the designation of drop-shipment if a drop-shipment; provided, however, if the invoice furnished said distributing agent by the manufacturer or other person ordering such delivery, or the bill of lading prepared by said distributing agent to cover the shipment under said invoice, contains all the information required to be reported, it will be sufficient to send a copy of said invoice or invoices, or a copy of said bill of lading, or bills of lading, to the Comptroller daily.

(5) Permits required by Articles 7.09, 7.16 or 7.23 of this Chapter issued after the effective date of this Chapter shall expire the last day of February following issuance. From the effective date of this Chapter the Comptroller shall prorate the fees for new or renewal permits required by Articles 7.09 or 7.23 of this Chapter by allowing a discount computed by quarters of the licensing year. The licensing year shall be from and shall include the first day of March through the last day of February of each year.

(6) Each permit holder required to obtain a permit under Articles 7.09, 7.16 or 7.23 of this Chapter who fails to obtain a renewal permit prior to the beginning of the licensing year shall pay, in addition to the permit fee, a late application fee of One Dollar (\$1.00), which shall be paid to the Comptroller at the time the permit fee is paid.

(7) When it is necessary for any authorized representative of the Comptroller to visit any permit holder to collect a permit fee due under this Chapter the permit holder shall pay a service fee of Five Dollars (\$5.00) in addition to the permit fee.

(8) In cases where any permit expires within three (3) months from the date of issuance or renewal because of the end of the licensing year, the Comptroller may with the consent of the permit holder collect both the discounted permit fee or permit fee for a current permit plus a permit fee for the entire licensing year following, and issue a permit or permits for both periods.

#### Art. 7.24 Penalties

If any distributor, wholesale dealer, retail dealer or distributing agent shall (a) fail to keep any of the records required to be kept by the provisions of this Chapter, or (b) if any distributor, wholesale dealer or retail dealer shall sell any cigarettes upon which a tax is required to be paid by this Chapter without at the time having a valid permit, or (c) if any distributor, wholesale dealer or distributing agent shall fail to make any reports to the Comptroller required herein to be made, or (d) make a false or incomplete report to said Comptroller, or (e) if any distributing agent shall store any unstamped cigarettes in the State or distribute or deliver any unstamped cigarettes within this State without at the time of said storage or delivery having a valid permit, or (f) if any person affected by this Chapter shall fail or refuse to abide by the provisions hereof or the rules and regulations promulgated hereunder, or violate the same, he shall forfeit to the State as a penalty, the sum of not less than Twenty-five Dollars (\$25) nor more than Five Hundred Dollars (\$500). Each day's violation shall constitute a separate offense and incur another penalty, which, if not paid shall be recovered in a suit by the Attorney General in a court of competent jurisdiction in Travis County, Texas, or any other court having jurisdiction.

**Art. 7.25 Information Confidential**

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

**Art. 7.26 Penalty for Disclosure of Records**

Any employee of the Attorney General or of the Comptroller who (a) gives to any person, firm or corporation, any information secured, derived or obtained from the inspection or examination of books or records authorized under the terms of this Chapter or from the records, reports, instruments and/or copies thereof, required to be furnished under the terms of this Chapter, or (b) permits the inspection by any person, firm or corporation, of any of the reports, records, instruments, or copies thereof required to be furnished under the terms of this Chapter, or (c) gives a copy or copies of any such records, reports, instruments, or copy thereof required to be furnished under the terms of this Chapter to any person, firm or corporation, or (d) gives any information to any person, firm or corporation concerning the records of all or any parts of the reports, records, instruments, or copies thereof required to be furnished under the provision of this Chapter, shall be guilty of a misdemeanor and shall be punished by confinement in the County Jail for not more than six (6) months, or by a fine of not less than One Hundred Dollars (\$100) nor more than Five Hundred Dollars (\$500), or by both such fine and imprisonment; provided, however, that it shall not be an offense under the terms of this Chapter for an employee of the Attorney General or of the Comptroller to furnish any such information as is hereinabove described to any other employee of the Attorney General or of the Comptroller where such information is furnished or given for use in the enforcement of this Chapter.

**Art. 7.27 Inspection**

For the purpose of enabling the Comptroller to determine the tax liability of a distributor, wholesale dealer, retail dealer, distributing agent or any other person dealing in cigarettes, or to determine whether a tax liability has been incurred, he shall have the right to inspect any premises where cigarettes are manufactured, produced, made, stored, transported, sold or offered for sale or exchange and to examine all of the records required herein to be kept or any other records that may be kept incident to the conduct of the cigarette business of said distributor, wholesale dealer, retail dealer, distributing agent, or other person dealing in cigarettes. The said authorized officers shall also have the right as an incident to determining the said tax liability, or whether a tax liability has been incurred, to examine all stocks of cigarettes and cigarette stamps, and for the foregoing purpose said authorized officers shall also have the right to remain upon said premises for such length of time as may be necessary to fully determine said tax liability, or whether a tax liability has been incurred, and it shall be unlawful for any of the foregoing persons to fail to produce upon demand by the Comptroller any

records required herein to be kept or to hinder or prevent in any manner the inspection of said records or the examination of said premises.

#### Art. 7.28 Record of Carriers

Every common and contract carrier transporting cigarettes in this State, whether in intrastate or interstate commerce, shall keep a complete record in Texas of all cigarettes so transported or handled which record shall show separately for each transaction the name of the consignor and consignee, the date of delivery, and the number or quantity of cigarettes transported or handled. Such records together with all other books or records which may be in the custody of said carriers showing the shipment of cigarettes shall be open to the inspection at all times of the Comptroller, Attorney General, and their authorized representatives and said common and contract carriers shall give and permit such authorities free access to all such books and records and all cigarettes in the custody of such carriers.

#### Art. 7.29 Unstamped Cigarettes

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

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

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

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

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

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

#### Art. 7.30 Seizure

(1) All cigarettes on which taxes are imposed by this Chapter, which shall be found in the possession, or custody or within the control of any person, for the purpose of being sold or removed by him in fraud of the Cigarette Tax Law, and all cigarettes which are removed or are deposited or concealed in any place with intent to avoid payment of taxes levied

thereon, and any automobile, truck, boat, conveyance or other vehicle whatsoever, used in the removal or transportation of such cigarettes for such purposes, and all equipment, paraphernalia, or other tangible personal property incident to and used for such purpose, found in the place, building or vehicle where such cigarettes are found, may be seized by the Comptroller, with or without process, and the same shall be from the time of such seizure forfeited to the State of Texas, and a proceeding in the nature of a proceeding in rem shall be filed in a court of competent jurisdiction in the county of seizure to maintain such seizure and declare and perfect said forfeiture as hereinafter provided. All such cigarettes, vehicles and property so seized as aforesaid, remaining in the possession or custody of the Comptroller, sheriff or other officer for forfeiture or other disposition as provided by law, shall be deemed to be in the custody of law and irrepleviable.

(2) The Comptroller, when making the seizure aforesaid, shall immediately make a written report thereof showing the name of the agent or representative making the seizure, the place and person where and from whom such property was seized and an inventory of same and appraisement thereof at the usual and ordinary retail price of the article seized, which report shall be prepared in duplicate, signed by the agent or representative so seizing, the original of which shall be given to the person from whom said property is taken, and a duplicate copy of which shall be filed in the office of the Comptroller and shall be open to public inspection.

(3) The Attorney General, or the district or county attorney of the county of seizure, shall, at the request of the Comptroller, file in the county and court aforesaid forfeiture proceeding in the name of the State of Texas as plaintiff, and in the name of the owner or person in possession as defendant, if known, and if unknown, then in the name of said property seized and sought to be forfeited. Upon the filing of said proceeding, the Clerk of said Court shall issue notice to the owner or person in possession of such property to appear before such Court upon the date named therein, which shall not be less than two (2) days from service of such notice, to show cause why the forfeiture aforesaid should not be declared, which notice shall be served by the sheriff of said county. In the event the defendant in said proceeding is a nonresident of the State or his residence is unknown, or in the event the name of such defendant is unknown, upon affidavit by the Comptroller to this effect, notice or process shall be served or published in the mode and manner provided by existing statutes for service of citation upon nonresidents or unknown defendants, provided, however, such proceeding may be heard at any time after ten (10) days from service of such process or the first publication of such notice. And in such cases, the Court shall appoint an attorney to represent such defendant, who shall have the rights, duties and compensation as provided by existing statutes in cases of attorneys appointed to represent nonresidents and unknown defendants.

(4) In the event final judgment is rendered in the forfeiture proceeding aforesaid, maintaining the seizure, and declaring and perfecting the forfeiture of said seized property, the Court shall order and decree the sale thereof to the highest bidder by the sheriff at public auction in the county of seizure, after ten (10) days notice by advertisement at least twice in any legal publication of such county, and the proceeds of such sale, less expenses of seizure and court costs, shall be paid into the State Treasury and shall be allocated as the Cigarette Tax is herein allocated. In the event the district or county attorneys file and prosecute such cases, a fee of Fifteen Dollars (\$15) shall be paid to such officers in addition to all other fees allowed by law under the Maximum Fee Bill,

which fee shall be collected as Court costs out of the proceeds of such sale.

**Art. 7.31 Sale by Comptroller**

In lieu of the forfeiture proceeding aforesaid, the Comptroller may elect to sell the cigarettes and property seized by him in cases where such property appears by the report or receipt of the officer seizing same to be of the appraised value of Five Hundred Dollars (\$500), or less, by the following summary proceedings:

(1) The Comptroller shall publish a notice in some newspaper of the County where the seizure was made, describing the property seized and stating the time, place and cause of their seizure, and requiring any person claiming such property, or any interest therein or thereto, to appear and make such claim within fifteen (15) days from the date of such publication of such notice.

(2) Any person claiming such property so seized or any interest therein or thereto, within the time specified in such notice, may file with the said Comptroller his claim, stating his interest in the property seized, and may execute a bond to the State of Texas in the penal sum of Two Hundred and Fifty Dollars (\$250), with sureties to be approved by said Comptroller, conditioned that, in case of the establishment of forfeiture of the articles so seized, the obligors shall pay all the costs and expenses of the proceeding to obtain such forfeiture; and upon the delivery of such bond to the Comptroller he shall transmit the same with a certified copy of the report or receipt of the property seized, filed in his office, to the Attorney General or the County or District Attorney of the county of seizure, and forfeiture proceedings shall be instituted and prosecuted thereon in the Court of competent jurisdiction as provided by law.

(3) If no claim is interposed and no bond is given within the time above specified, the Comptroller shall give ten (10) days notice of a sale of the property under seizure by publication two (2) times in a newspaper of the county of seizure, and, at the time and place specified in such notice, shall sell the property so seized at public auction, and, after deducting expense of seizure, appraisal, custody and sale, he shall deposit the proceeds thereof in the State Treasury, which shall be allocated to the funds to which the Cigarette Tax levied hereunder is apportioned.

In the event the cigarettes seized hereunder and sought to be sold upon forfeiture, summary sale, or other process provided by law shall be unstamped, the officers selling the same shall, upon sale thereof, affix or cause to be affixed, the stamps so required and deduct the expense thereof from the proceeds of such sale.

**Art. 7.32 Seizure or sale no defense**

The seizure, forfeiture and sale of cigarettes and other property under the terms and conditions hereinabove set out, and whether with or without court action, shall not be or constitute any defense or exemption to the person owning or having control or possession of such property from criminal prosecution for any act or omission made or offense committed under this law or from liability to pay penalties provided by this law, with or without suit therefor.

**Art. 7.33 Waiver permitted; penalty**

Jurisdiction is hereby conferred upon the Comptroller to waive any proceedings for the forfeiture of any of the property seized under the provisions of this Chapter, or any part thereof, provided that the offender

shall first affix to each of the individual packages of cigarettes seized the amount and value of the stamps necessary to represent the tax, and in addition to the stamps required, pay into the State Treasury through the Comptroller a sum equal to the value of the stamps required to be affixed to such cigarettes. The said Comptroller may make a compromise with any claimant, before or after the claim is filed in court. A record of all such compromises and waivers of forfeiture shall be kept by the Comptroller and shall be open to public inspection.

If upon examination of invoices or other investigation the Comptroller finds that cigarettes have been sold without stamps affixed as required in this Chapter, he shall have the power to require of such person, to pay into the State Treasury through him a sum equal to twice the amount of the stamp tax due. If upon examination of invoices or other investigation, such person is unable to furnish evidence to the Comptroller of sufficient stamp purchases to cover unstamped cigarettes purchased by him, the prima facie presumption shall arise that such cigarettes were sold without the proper stamps affixed thereto.

#### **Art. 7.34 Disposition of money**

All moneys collected by the Comptroller under the provisions of Article 7.33 of this Chapter, after payment of all costs and commissions, shall be paid to the Treasury and credited as the taxes imposed hereunder are credited.

#### **Art. 7.35 Duties of Comptroller, rules and regulations**

(1) It is hereby made the duty of the Comptroller to collect, supervise and enforce the collection of all taxes and penalties that may be due under the provisions of this Chapter and to that end the Comptroller is hereby vested with all of the power and authority conferred by this Chapter. Said Comptroller also shall have the power and authority to make and publish rules and regulations, not inconsistent with this Chapter or the other laws or the Constitution of this State, or of the United States, for the enforcement of the provisions of this Chapter and the collection of revenues hereunder.

(2) The Treasurer may promulgate rules and regulations hereunder providing for the refund on stamps which by reason of damage become unfit for sale or use.

(3) The Treasurer shall promulgate rules and regulations providing for the exchange, or replacement without cost, of new stamps for any stamps affixed to any package of cigarettes which cigarettes have become unfit for use or consumption, or unsalable, and which cigarettes have been destroyed or returned to the manufacturer, upon proof satisfactory to the Treasurer that such cigarettes have become unfit for use or consumption or unsalable and have been destroyed or returned to the manufacturer.

#### **Art. 7.36 Penalties**

(a) Whoever shall make a first sale of any cigarettes without a stamp being then and there affixed to each individual package, or (b) whoever shall sell, offer for sale, or present as a prize or gift any cigarettes without a stamp being then and there affixed to each individual package, or (c) whoever shall sell cigarettes in any quantities less than individual package, or (d) whoever shall knowingly consume, use or smoke any cigarettes upon which a tax is required to be paid without a stamp being affixed upon each individual package, or (e) whoever possesses in violation of any provisions of this Chapter, cigarettes upon which a tax is re-



quired to be paid, in quantities of less than ten thousand (10,000) cigarettes, or (f) whoever shall knowingly cancel or mutilate any stamp affixed to an individual package of cigarettes for the purpose of concealing any violation of this Chapter, or with other fraudulent intent, or (g) whoever shall use any artful device or deceptive practice to conceal any violation of this Chapter, or (h) whoever shall mislead the Comptroller in the enforcement of this Chapter, or (i) whoever shall refuse to surrender to the Comptroller upon demand any cigarettes possessed in violation of any provision of this Chapter, or (j) whoever as distributor, or as agent, employee or representative of a distributor, shall make a first sale of any cigarettes without at the time of said first sale having a valid permit, or (k) make a first sale without at the time of said first sale having a permit posted so as to be easily seen by the public, or (l) whoever as distributor, wholesale dealer, or the agent, employee or representative of a distributor or wholesale dealer, shall fail to deliver an invoice required by law to be delivered to a purchaser of cigarettes, or (m) whoever as wholesale dealer or retail dealer or the agent, employee or representative of a wholesale dealer or retail dealer, shall sell cigarettes without at the time of said sale having a valid permit, or (n) sell cigarettes without at the time of said sale having a permit posted so as to be easily seen by the public, or (o) whoever as distributing agent shall store or distribute unstamped cigarettes without at the time of said storage or distribution having a valid distributing agent's permit shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200).

#### Art. 7.37 Penalties

(a) Whoever shall knowingly transport any cigarettes in quantities of more than forty (40) cigarettes without a stamp being then and there affixed to each individual package, or (b) while transporting cigarettes shall willfully refuse to stop the motor vehicle he is operating when called upon to do so by a person authorized to stop said motor vehicle, or (c) refuse to permit a full and complete inspection of his cargo by said authorized person, or (d) whoever shall refuse to permit a full and complete inspection by said authorized person of any premises where cigarettes are manufactured, produced, made, stored, transported, sold or offered for sale or exchange, or (e) whoever shall use, sell, offer for sale or possess for the purpose of use or sale, any previously used stamps, or (f) attach or cause to be attached to any individual package of cigarettes any previously used stamp, or (g) use or consent to the use of any previously used stamps in connection with the sale or offering for sale of any cigarettes, or (h) whoever shall purchase stamps from any person other than the Treasurer without then and there having a requisition from the Comptroller authorizing said purchase, or (i) whoever shall sell any lawfully issued stamps to any person other than the Treasurer without then and there having a requisition from the Comptroller authorizing said sale, or (j) whoever shall possess in violation of any provision of this Chapter, cigarettes upon which a tax is required to be paid in quantities of ten thousand (10,000) or more cigarettes, or (k) whoever as distributor or distributing agent, or as the agent, employee or representative of a distributor or a distributing agent shall knowingly make, deliver to and file with the Comptroller a false return or report, or an incomplete return or report, or (l) whoever shall knowingly fail to make and deliver to the Comptroller a return or report as required by the provisions of this Chapter to be made, or (m) whoever as distributor, wholesale dealer, retail dealer or distributing agent, or as the agent, employee or representa-

tive of a distributor, wholesale dealer, retail dealer or distributing agent, shall destroy, mutilate or secrete any of the books and records required herein to be kept, or (n) shall refuse to permit the Comptroller or the Attorney General to inspect, examine and audit any books and records required herein to be kept, or any other records incident to the conduct of the cigarette business that may be kept, or (o) shall knowingly make any false entry or fail to make entries in the books and records required by the provisions of this Chapter to be kept by a distributor, wholesale dealer, retail dealer or distributing agent, or (p) shall fail to keep for a period of two (2) years in Texas any books and records required herein to be kept by a distributor, wholesale dealer, retail dealer or distributing agent, shall be guilty of a felony and shall be punished by confinement in the State Penitentiary for not more than two (2) years or by confinement in the County Jail for not less than one (1) month nor more than six (6) months, or by a fine of not less than One Hundred Dollars (\$100) nor more than Five Thousand Dollars (\$5,000) or by both such fine and imprisonment.

Provided that if any penalties prescribed in Article 7.36 of this Chapter overlap as to offenses which are also punishable under Article 7.37 of this Chapter, then the penalties prescribed by this Article shall apply and control all other penalties.

Venue of a prosecution under Articles 7.36 or 7.37 shall be in Travis County, Texas, or in the county in Texas where the offense occurred.

#### Art. 7.38 Counterfeit Stamps

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

Venue of a prosecution under this Article shall be in Travis County, Texas.

#### Art. 7.39 Enforcement Fund

Two and one half per cent ( $2\frac{1}{2}\%$ ) of three-fourths ( $\frac{3}{4}$ ) of the gross revenue derived from the tax levied by this Chapter shall be set aside in a special fund subject to the use of the Comptroller to be expended in the administration and enforcement of the provisions of this Act and so much of the proceeds of two and one half per cent ( $2\frac{1}{2}\%$ ) of three-fourths ( $\frac{3}{4}$ ) of said tax and funds shall be and the same is hereby appropriated to the Comptroller for said purposes and same shall be paid monthly as needed.

Payment for the manufacturing or printing of the cigarette tax stamps and for any expenses incurred by the Board incident thereto shall be made from the revenue derived from the cigarette tax before such fund is allocated under the provisions of this Chapter and as much of said fund as may be necessary is hereby appropriated for such purpose; any unexpended portion of said funds so specified shall at the end of each biennium be paid in the proper proportion to the funds to which the cigarette tax fund shall be apportioned.

**Art. 7.40 Supervision of Stamp Procurement**

The Director of the Cigarette Tax Division shall, in addition to the duties of supervising and directing the administration and enforcement of this provision of this Chapter, personally supervise the printing and manufacturing of all cigarette tax stamps under the contract as awarded by the Board of Control and he shall have possession and custody of, and be responsible for, all specification plans, photographs, impressions, drawings, electroplates, printing stones and any and all other property or equipment that may provide a means of reproducing, manufacturing or printing of cigarette tax stamps in the design selected by the Cigarette Tax Stamp Board. The said Director shall also be charged with the responsibility of inspecting the stamps after such stamps have been manufactured or printed and all sheets of stamps that do not meet the specifications required in the contract shall be rejected and destroyed by or under the direct personal supervision of said Director; and the Director shall have control of said stamps and be responsible therefor until delivery is made to the Treasurer.

**Art. 7.41 Nature of Tax**

The tax herein levied is intended by the Legislature to be an excise or use tax and not an occupation tax, but in the event that any Court of competent jurisdiction shall declare the tax levied herein to be an occupation tax, it is hereby specifically declared to be the intention of the Legislature that such holding shall not affect the validity of the remaining provisions of this Chapter, and in that event, one-fourth ( $\frac{1}{4}$ ) of the net revenue derived from the tax levied herein shall be allocated to the Available School Fund and three-fourths ( $\frac{3}{4}$ ) shall be allocated to the Clearance Fund established by House Bill No. 8, Acts Forty-seventh Legislature, Regular Session, 1941, page 269, Chapter 184, as amended.

## CHAPTER 8

## CIGARS AND TOBACCO PRODUCTS TAX

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**Article 8.01 Definitions**

Whenever used in this Chapter:

(a) The word "Person" shall mean any individual, company, corporation, partnership, association, joint adventure, estate, trust or any other group or combination acting as a unit, and the plural, as well as the singular, unless the intention to give a more limited meaning is disclosed by the context.

(b) The word "Comptroller" shall mean the Comptroller of Public Accounts of the State of Texas.

(c) "Distributor" shall mean any and each of the following:

(1) Any person engaged in the business of selling tobacco products in this State who brings, or causes to be brought, into this State from without the State any tobacco products for sale, use or consumption.

(2) Any person who makes, manufactures, or fabricates tobacco products in this State for sale, use, or consumption in this State.

(d) The word "Wholesaler" as used herein shall include dealers whose principal business is that of a wholesale dealer or jobber and who is known to the trade as such, who shall sell any cigars or tobacco products to licensed retail dealers only for the purpose of resale or giving it away, or exposing the same where it may be taken or purchased or otherwise acquired by the retailer.

(e) The word "Retailer" as used herein shall include every dealer other than the wholesale dealer as defined above whose principal business is that of selling merchandise at retail, who shall sell or offer for sale cigars or tobacco products, irrespective of quantity or number of sales, giving the same away or exposing the same where it may be taken or purchased or otherwise acquired by the consumer.

(f) "Solicitor" shall mean any person representing a licensed non-resident supplier who shall solicit or take orders for tobacco products to be shipped in interstate commerce to a licensed distributor in this State.

(g) The word "Consumer" shall mean a person who comes into possession of tobacco products for the purpose of consuming them, giving them away, or disposing of them in any other way.

(h) The words "First Sale" shall mean and include the first sale or distribution of cigars or tobacco products in intrastate commerce in the State of Texas or the first use or consumption of cigars or tobacco products within this State.

(i) The words "Tobacco Products" shall mean any cigars, cheroots, stogies, smoking tobacco (including granulated, plug-cut, crimp-cut,

ready-rubbed, and any other kinds and forms of tobacco suitable for smoking in a pipe or cigarette), chewing tobacco (including Cavendish, Twist, plug, scrap and any other kind and form of tobacco suitable for chewing, however prepared); and shall include any other articles or products made of tobacco or any substitute therefor, but shall not include snuff or cigarettes.

(j) The term "Distributing Agent" shall mean and include every person in this State who acts as an agent of any person outside the State by receiving cigars and tobacco products in interstate commerce and storing such items subject to distribution or delivery upon order from said person outside the State to distributors, wholesale dealers, and retail dealers, or to consumers within the State of Texas.

(k) The term "Drop Shipment" shall mean and include any delivery of cigars or tobacco products received by any person within this State when payment for such cigars or tobacco products is made to the shipper or seller, buyer, or through a person other than the consignee.

(l) The term "Cigar," as used herein, shall mean any roll of fermented tobacco wrapped in tobacco in any form. The main stream of smoke given off by a cigar shall be of alkaline reaction to litmus paper; and the main stream of smoke of a cigarette shall be of acid reaction to litmus paper.

(m) The word "Dealer" shall include every person, firm, corporation, or association of persons who manufacture cigars or tobacco products for distribution, sale or use or consumption in the State of Texas. The word "Dealer" is also further defined as meaning any person, firm, corporation, or association of persons who imports cigars or tobacco products from any State or foreign country for distribution, sale, use, or consumption in the State of Texas.

(n) The word "Board" or "Board of Control" shall mean the Board of Control of the State of Texas.

(o) The word "Treasurer" shall mean the Treasurer of the State of Texas.

(p) The term "Retail Price" shall mean the price paid by the consumer for individual cigars or other tobacco products and shall be construed to mean the retail or selling price before adding the amount of the tax and shall be construed to mean the ordinary retail price.

#### Art. 8.02 Tax Levy and Rate

There is hereby levied a tax upon the "first sale" of cigars and tobacco products as those terms are defined herein, which tax shall be determined by the following schedule:

(a) Upon cigars of all description weighing not more than three (3) pounds per one thousand (1,000), one cent (1¢) for each ten (10) cigars or fraction thereof.

(b) Upon cigars of all description weighing more than three (3) pounds per one thousand (1,000) retailing for not more than three and three-tenths cents (3.3¢) each, Seven Dollars and Fifty Cents (\$7.50) per one thousand (1,000).

(c) Upon cigars of all description weighing more than three (3) pounds per one thousand (1,000) retailing for over three and three-tenths cents (3.3¢) each, Fifteen Dollars (\$15) per one thousand (1,000).

(d) Upon all chewing tobacco and all smoking tobacco including granulated, plug-cut, crimp-cut, ready-rubbed, and other kinds and forms of tobacco prepared in such manner as to be suitable for smoking in a pipe or cigarette: the tax shall be twenty-five per cent (25%) of the factory list price, exclusive of any trade discount, special discount, or deals.

**Art. 8.03 Tax on "first sale"**

The tax levied herein shall be paid only once to the State Treasurer by the person making the "first sale" in this State. No person, however, shall be required to pay a tax on cigars or tobacco products brought into this State on or about his person in quantities or amounts which would ordinarily retail at twenty-five cents (25¢) or less when such cigars or tobacco products are actually used by said person and not sold or offered for sale in this State.

**Art. 8.04 Report to be filed with Comptroller**

On or before the tenth day of each calendar month every distributor shall file with the Comptroller in Austin, Travis County, Texas, on a form prescribed by the Comptroller, a report covering the preceding month which shall show such information as the Comptroller may require of cigars and tobacco products handled by said distributor during the preceding month including all such products purchased, received, acquired or ordered, all such products sold, distributed, used, lost or otherwise disposed of, all such products on hand at the beginning and end of said month, and such other information pertinent to cigars and tobacco products handled and the taxes due on said products as the Comptroller may require.

The distributor shall, at the time of making said report, pay to the State of Texas at the office of the Comptroller the taxes levied herein upon all cigars and tobacco products sold, used or otherwise disposed of by him during the preceding month, which said tax payment shall be in legal tender or in proper form of money order or exchange made payable to the State Treasurer.

**Art. 8.05 Records Required**

(a) Every distributor, wholesale dealer and retail dealer shall keep at each place of business in Texas, except as otherwise provided, for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General a complete record of all tobacco products purchased or received by said distributor, wholesale dealer or retail dealer, including all invoices, bills of lading, way bills, freight bills, express receipts or copies thereof and all other shipping records furnished by the carrier and the seller or shipper of said tobacco products and in addition thereto a book record in a well-bound book which will provide complete information of all tobacco products purchased or received by said distributor, wholesale dealer or retail dealer at each place of business. Such book record shall show the date said tobacco products were received, with the designation of whether drop-shipment or otherwise, the name and address of the person from whom purchased and from whom received, the point from which shipped or delivered, the point at which received, the name of the carrier, if shipped by common carrier, the name of the boat or barge if shipped by water, whether registered mail, insured parcel post or open mail if received by mail, the number and kind of tobacco products received on which tax has been paid, and, if a distributor, the number and kind of tobacco products received on which tax has been paid, and an inventory or inventories on the first of each month, showing the number and kind of tobacco products on hand on which tax has been paid.

(b) Every distributor and wholesale dealer shall keep at each place of business in Texas, except as otherwise provided, for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General a complete record of each and every sale, distribution or use of

tobacco products, regardless of whether or not the tax is due upon said tobacco products under the provisions of this Chapter, upon an invoice to be furnished by said distributor or wholesale dealer which invoice shall be issued in duplicate except when the sale or distribution is made by drop-shipment in which event the invoice shall be issued in triplicate, said invoice shall show the date of sale, distribution or use, the purchaser and his address, the means of delivery, the name of the carrier if delivered by common carrier, whether registered mail, insured parcel post or open mail if delivered through the mail, the designation of drop-shipment if the sale is a drop-shipment made by a distributor, the quantity and kind of tobacco products sold, and if the sale is by a distributor the number and kind of tobacco products upon which required tax has been paid, and in addition thereto, the said invoices shall be supported by the receipts and other records furnished by the carrier of tobacco products. The original of said invoice shall be delivered to the purchaser and the duplicate shall be kept by the distributor or wholesale dealer as the case may be; provided however, that when tobacco products are distributed or exchanged in any manner where no sale is involved that an explanation of such transaction shall be stated on said invoice. Provided further that where a distributor or wholesale dealer sells tobacco products at retail it will be sufficient for said distributor or wholesale dealer and he shall be required to issue an invoice to his retail department for tobacco products to be sold at retail and such stock of tobacco products invoiced for retail sales shall be kept separate and apart from the other stock of said distributor or wholesale dealer; provided, further, that every distributor and wholesale dealer shall keep at each place of business in Texas for a period of two (2) years for the inspection at all times by the authorized authorities a book record in a well-bound book or books of all tobacco products sold, distributed or used by said distributor or wholesale dealer. Such book record shall include all information required to be kept on the invoice aforesaid.

(c) Provided, that every person engaged in the business of selling tobacco products in interstate commerce only shall be required to keep such records and make such reports to the Comptroller as are required of a distributor.

(d) A salesman in the employ of a manufacturer, and handling only the products of his employer, who engages in the business of selling or distributing tobacco products on which tax has been paid in this State for the purpose of resale, shall be required to keep the same records, for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General, as are required of a wholesale dealer. Such salesman shall also be required to deliver the original of the invoice required to be made to the purchaser or recipient of said tobacco products.

(e) "Solicitors" engaged in the business of soliciting orders for tobacco products for shipment to points within this State shall keep in Texas for a period of two (2) years for inspection at all times of the Comptroller and the Attorney General a complete record of all orders solicited and all orders taken for tobacco products for such shipments which record shall include the quantity and kind of tobacco products ordered or shipped, from whom ordered or shipped, the full name and correct address of the purchaser, the date said tobacco products were ordered, and if available, the date said tobacco products were shipped. Such record shall be kept for all tobacco products shipped to points within this State by the vendor whom the solicitor represents whether the order was taken by

said solicitor or otherwise if said solicitor is given credit for or furnished records of such orders or such shipments.

All invoices, bills of lading, freight bills, way bills, express receipts, requisitions, and copies of orders required to be kept by the provisions of this Chapter, shall be kept separate and distinct from any records of other merchandise handled by the person required to keep such records.

#### Art. 8.06 Sale of Permits and Fees

(a) Every distributor, wholesale dealer and retail dealer in this State now engaged or who desires to become engaged, in the sale or use of tobacco products upon which a tax is required to be paid, shall, within thirty (30) days from the date this law becomes effective, file with the Comptroller an application for a permit as a distributor, wholesale dealer or retail dealer, as the case may be, said application to be accompanied by a fee of Twenty-five Dollars (\$25) if for a distributor's permit, or a fee of Fifteen Dollars (\$15) if for a wholesale dealer's permit, or a fee of Five Dollars (\$5) if for a retail dealer's permit. Said applications shall be on forms prescribed by the Comptroller, to be furnished upon written request, the failure to furnish which shall be no excuse for the failure to file the same unless an absolute refusal is shown. Said forms shall set forth: (a) the manner under which such distributor, wholesale dealer or retail dealer transacts or intends to transact such business as distributor, wholesale dealer or retail dealer; (b) the principal office, residence and place of business in Texas for which the permit is to apply; (c) and if other than an individual, the principal officers or members thereof not to exceed three (3), and their addresses. The Comptroller may require any other information as he may desire in said applications. No distributor, wholesale dealer or retail dealer shall sell any tobacco products until such application has been filed and the fee prescribed paid for a permit and until such permit is obtained. Said permits shall expire on the last day of February of each year, but may be renewed upon like application and upon payment of another fee in the amount prescribed for the kind of permit desired. An application shall be filed and a permit obtained for each place of business owned or operated by a distributor, wholesale dealer or retail dealer. Provided, however, that the Comptroller may issue a joint permit as a distributor, wholesale dealer, retail dealer, or distributing agent for both cigarettes and tobacco products, in which case only one permit fee shall be paid by the permit holder. Provided, further, that any distributor manufacturing, importing, or acquiring in any other manner, tobacco products for his own personal use or consumption and not to be disposed of by sale, gift, or otherwise shall not be required to obtain a distributor's permit but shall be required to make the report required herein of a distributor and to comply with all other provisions of this Act affecting a distributor, provided further, that the Comptroller shall be authorized to accept any tax from any distributor acquiring tobacco products for his own personal use or consumption and not for sale or other disposal.

(b) Upon receipt of the application and fee herein provided for, the Comptroller shall issue to every distributor, wholesale dealer or retail dealer for the place of business designated, a nonassignable consecutively numbered permit, designating the kind of permit and authorizing the sale of tobacco products in this State. Said permit shall provide that the same is revocable and shall be forfeited or suspended upon any violation of any provision of this Chapter or any reasonable rule or regulation adopted by the Comptroller. If such permit is revoked or suspended said distributor, wholesale dealer or retail dealer shall not sell any tobacco



products from such place of business until a new permit is granted or the suspension of the old permit removed.

Application for permit should be accompanied by remittance in cash, postal or express money order, or Austin exchange for the required amount. Any permit issued in exchange for a "personal" check will be conditioned upon final payment of such "personal" check, and may be revoked and cancelled by the State Comptroller after five (5) days notice to the dealer that payment of his check has been refused by the bank upon which drawn. No dealer shall make any sale or distribution of tobacco products after such revocation. Upon receipt of the necessary funds to redeem such dishonored check the State Comptroller may remove the suspension of the permit at his discretion. The permit when revoked shall be subject to recall and seizure by the State Comptroller.

The permit shall at all times be publicly displayed by the distributor, wholesale dealer or retail dealer at his place of business so as to be easily seen by the public and the persons authorized to inspect the same. Provided, further, that any person who operates both as a distributor and wholesale dealer in the same place of business shall only be required to obtain a distributor's permit for the particular place of business where such operation of said business is conducted, but if any distributor or wholesale dealer sells tobacco products at both wholesale and retail, an additional permit as a retail dealer shall be required. Any unexpired permit may be returned to the Comptroller for credit on the unexpired portion thereof only upon the purchase of a permit of a higher classification.

If the application is for a permit to sell tobacco products from or by means of a tobacco products vending machine, train, automobile, airplane, boat or other vehicle, the serial number of said vending machine, the make, motor number and State Highway license number of said automobile or other vehicle and the name of the railway company and number of said train, the name of the airplane, the name of the boat, shall be shown on the application.

Permits shall be displayed on each tobacco products vending machine in a place easy to be seen by the public and officials authorized to inspect them. Such permits shall not be folded in a manner that will cover any of the information thereon. Permits assigned to trains shall be posted in the car where tobacco products are displayed or offered for sale. Permits assigned to automobiles or trucks shall be posted in a conspicuous place in the cab or driver's seat of such vehicle.

#### Art. 8.07 Solicitor's Permit and Fee

No individual shall offer for sale or solicit any order in this State for the sale of any tobacco products for shipment to points within this State, for his own account or for the account of any person, firm, association or corporation, unless and until such person or individual shall have first filed an application for and obtained from the State Comptroller a solicitor's permit. Such permit shall authorize the permit holder to solicit orders for the sale of tobacco products and shall set forth the name and address of the vendor and/or employers whom the solicitor represents, and such solicitor shall not represent any vendor, and/or employers whose name does not appear upon such permit. The fee for such permit shall be One Dollar (\$1) per year or part thereof, and the permit shall expire on the last day of February, but may be renewed upon like application and upon payment of another fee in the amount prescribed. Such permit holder shall, on the fifth day of each month, file with the Comp-

troller, on proper forms to be supplied him by said official, copies of all orders solicited by him in the State during the preceding calendar month for tobacco products, said copies to show the quantity and kind of tobacco products ordered, by whom ordered, from what person, firm or corporation ordered, the full name and correct address of purchaser, the date said tobacco products were ordered and any other information which may be required by the Comptroller; and the failure of such permit holder to comply with the provisions hereof shall subject him to the forfeiture of his permit, after five (5) days notice and opportunity to be heard by the Comptroller of Public Accounts. No new permit shall be issued for a period of one year to anyone whose permit has been forfeited, except in the discretion of the Comptroller.

If any person shall offer for sale or solicit any order in this State for the sale of tobacco products for shipment to a point within the State, without then and there having a valid solicitor's permit, he shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200).

#### **Art. 8.08 Bonds**

(a) Every distributor who is authorized by permit or required by law to make remittances or payments directly to this State of taxes collected upon the first sale of cigars and tobacco products or of taxes incurred upon the use of cigars and tobacco products shall file with his application for permit a bond in an amount to be set by the Comptroller at not less than three (3) times the amount of taxes that will accrue or may be expected to accrue during any month of the calendar year, but which bond shall never be less than One Thousand Dollars (\$1,000). Every such bond shall be executed by a surety company authorized to do business in this State, payable to the State of Texas, and shall remain in force from its effective date for a period of one year, unless released by the Comptroller as herein provided. Such bond shall be conditioned upon the full, complete, and faithful performance by the person for whom it is issued of all of the conditions and requirements imposed on said person by this Chapter or by rules and regulations promulgated by the Comptroller, and shall expressly guarantee the remittance or payment to the State of Texas within the time prescribed by law of all taxes, penalties, interest, and costs required herein to be remitted or paid to this State by said person. Any such bond which is continuous in form may be continued in effect for a succeeding year by a renewal certificate acceptable to the Comptroller which said renewal certificate, when and if issued, shall have all the force and effect of an original bond.

(b) If the amount of any existing bond becomes insufficient, or any surety on a bond becomes unsatisfactory or unacceptable, the Comptroller may require the filing of a new or an additional bond. The Comptroller shall also have authority to require the filing of reports and tax remittances at shorter intervals than one month if, in his opinion, an existing bond has become insufficient. If any distributor licensed hereunder shall fail or refuse to file a new or an additional bond within ten (10) days after demand or shall fail or refuse to file reports and remit or pay taxes at the intervals fixed by the Comptroller, his permit shall be revoked or suspended in the manner herein provided. The filing of a new bond, or the cancellation or suspension of a permit, or recoveries on any bond, shall not invalidate an existing bond, but any surety on a bond shall be released and discharged from any and all liability accruing under such bond after the expiration of thirty (30) days from the date such

surety has filed with the Comptroller at his office in Austin, Travis County, Texas, written request to be released and discharged. Such request shall not operate to release or discharge such surety from liabilities incurred prior to the expiration of said thirty (30) day period. The Comptroller shall, upon receipt of any such request, promptly notify the person in whose behalf such bond was filed, and unless said person shall file with the Comptroller a new bond in the amount and form herein provided within fifteen (15) days from the date of such notice, the Comptroller shall proceed to cancel the permit of said person.

(c) Any applicant for a permit may, in lieu of filing a surety bond, deposit cash in the amount of bond required in the Suspense Account of the State Treasury, or may deposit securities of a par value equal to the amount of bond required and of a class in which funds of The University of Texas may be legally invested. Such cash or securities shall be released within sixty (60) days after the cancellation or surrender of any permit held by the person in whose behalf they were deposited when said permit holder has been cleared of all tax liability by the Comptroller. The Comptroller is hereby authorized and empowered to withdraw and use any such cash and to sell any such securities and use the proceeds therefrom to pay off and satisfy any judgment secured in any action by this State to recover any taxes, costs, penalties, and interest found to be due said State by any person in whose behalf such cash or such securities were deposited. Any such person may acknowledge in writing the correctness of the State's claim against him for taxes, costs, penalties and interest and may authorize the use of said cash or the proceeds from the sale of such securities to pay on or pay off the claim without having suit filed. Provided, suit may be filed against any surety or sureties on any bond furnished by a distributor, without resorting to or exhausting the assets of such distributor or without making said distributor, as principal obligor to said bond, a party to said suit.

#### Art. 8.09 State to Have Preferred Lien

All taxes, penalties, and cost of auditing as hereinafter provided, due, or that might become due by any distributor to the State shall be and become a preferred lien, first and prior to any and all other existing liens; contract or statutory, legal or equitable, and regardless of the time such lien originated upon all the property of any distributor, devoted to or used in his business as a distributor, which property shall include manufacturing plants, storage plants, warehouses, office buildings and equipment, trucks, cars or other motor vehicles or any other equipment devoted to such use and each tract of land on which such manufacturing plant, storage plant, warehouse, office building or other property is located, and other tangible property which is used in carrying on such business and in addition thereto any and all tobacco products of said distributor. If any distributor shall fail to pay any taxes and penalties due the State in the proper manner provided for such payment the Comptroller may employ auditors or other persons to ascertain the correct amount due, and if such taxes have not been properly paid the distributor shall pay the reasonable expenses incurred in such investigation and audit as additional penalty. Provided, however, that all funds paid to the auditors of the Comptroller as expenses incurred in making audits, shall be placed in a special fund in the State Treasury, which shall be used until exhausted, for making other audits, and said sums are hereby appropriated for that purpose. Provided that nothing herein shall prevent the Comptroller, when said fund is exhausted, from using other funds available for that purpose.

**Art. 8.10 Suit for Tax, Evidence**

If any distributor or other person fails or refuses to pay any tax, penalties and cost of audit herein provided, and it becomes necessary to bring suit or to intervene in any manner for the establishment or collection of said tax claims, in any judicial proceedings, any report filed with the office of the Comptroller by such distributor or his representative, or a certified copy thereof certified to by the Comptroller or his Chief Clerk, showing the quantity of tobacco products sold by such distributor or his representatives, upon which such tax penalty, and cost of audit has not been paid, or any audit made by the Comptroller or his representative from the books or records of said distributor, or other person when signed and sworn to by such representative as being made from the records of said distributor or persons from whom such distributor has bought, received, or delivered tobacco products, whether from a transportation company or otherwise, such report or audit, shall be admissible in evidence in such proceedings and shall be prima facie evidence of the contents thereof; provided, however, that the incorrectness of said report or audit may be shown.

**Art. 8.11 Venue**

Venue of any civil suit, writ of injunction or other civil proceedings filed under the provisions of this Chapter shall be in a Court of competent jurisdiction, in Travis County, Texas, or in the county where the defendant in such proceedings has his domicile.

**Art. 8.12 Availability of Records**

Provided that if the place of business of any distributor, wholesale dealer or retail dealer is a vending machine, train, automobile, boat, or airplane, or other vehicle, such distributor, wholesale dealer or retail dealer, as the case may be, shall be required to designate in the application a permanent place where the records required to be kept for such place of business will be available to the Comptroller after the stocks are delivered from said vending machine, train, automobile or other vehicle and after such deliveries are made the records shall be kept at the permanent place so designated.

All tobacco products vending machine operators shall keep, at the place designated in the application to be the permanent place where records will be kept, a complete record of all tobacco products vending machines possessed, showing date each tobacco products vending machine was received from the seller, serial number of each tobacco products vending machine, present location of each tobacco products vending machine, date each tobacco products vending machine was placed on location, current permit number of each tobacco products vending machine, and date of expiration of each permit. If the tobacco products vending machine is sold or disposed of give name and address of the recipient of the tobacco products vending machine.

Provided that if a vending machine from which tobacco products are to be sold, has a valid cigarette dealer's permit, it will not be required for the vendor to apply for an additional permit for vending tobacco products. It will be necessary for this record to be shown in the requirements as described herein.

**Art. 8.13 Vending Machines**

It is expressly provided that no occupation tax shall be collected from any person vending tobacco products by means of a vending machine for

the privilege of selling tobacco products only by means of such machines other than the permit fee herein imposed for each machine.

**Art. 8.14 Forfeiture or Suspension of Permits**

If any distributor, wholesale dealer or retail dealer has violated any provision of this Chapter, or any rule and regulation promulgated hereunder, the Comptroller shall have the power and authority to forfeit or suspend the permit or permits of said distributor, wholesale dealer or retail dealer by giving written notice stating the reason justifying such forfeiture or suspension and the same shall be forfeited or suspended five (5) days from date of said notice. Any notice required to be given by the Comptroller may be mailed to the distributor, wholesale dealer or the retail dealer, as the case may be, at any place designated as the place of business on the application for permit required herein. No new permit shall be issued within a period of one (1) year to any one whose permit or permits have been forfeited, except at the discretion of the Comptroller. If any permit is forfeited or suspended no tobacco products shall be sold from the place of business for which said permit applied until a new permit is granted or the suspension of the old permit removed.

**Art. 8.15 Allocation of Revenues**

The funds derived from the issuance and sale of the permits to distributors, wholesale and retail dealers as herein provided shall be delivered to the Treasurer, and allocated in the same manner and in the same proportion as the funds derived from payment of tax.

**Art. 8.16 Application for Permit, Issuance, Records, Reports**

(a) Every distributing agent in this State now engaged or who desires to become engaged in the business of storing non-tax paid tobacco products previously sold in interstate commerce and received in interstate commerce for distribution on delivery only upon order received from without the State, shall within thirty (30) days from the effective date of this Chapter, file with the Comptroller an application for a distributing agent's permit, on a form prescribed by the Comptroller to be furnished upon written request, the failure to furnish shall be no excuse for the failure to file the same unless an absolute refusal is shown. Said form shall set forth the name under which such distributing agent transacts or intends to transact such business as a distributing agent, the principal office and place of business in Texas for which the permit is to apply, and if other than an individual, the principal officers or members thereof and their addresses. The Comptroller may require any other information he may desire in said application. No distributing agent shall engage in such business until such application has been filed and the fee of One Hundred Dollars (\$100) paid for the permit and until the permit has been obtained. Said permit shall expire on the last day of February of each year. An application shall be filed and a permit obtained for each place of business owned or operated by a distributing agent.

(b) Upon receipt of the application and permit fee herein provided for, the Comptroller shall issue to every distributing agent, for the place of business designated, a nonassignable, consecutively numbered permit authorizing the storing and distribution of non-tax paid tobacco products within this State when such distribution is made upon interstate orders only. Permits shall be renewable at the expiration thereof upon the payment of another fee in the amount prescribed.

(c) Every distributing agent shall keep at each place of business in Texas, except as otherwise provided, for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General, a complete record of all tobacco products received by him, including all orders, invoices, bills of lading, way bills, freight bills, express receipts, and all other shipping records which are furnished to said distributing agent by the carrier and the shipper of said tobacco products, or copies, thereof, and in addition thereto, a complete record of each and every distribution or delivery made by said distributing agent, such records of a distribution or delivery shall include all orders, invoices or copies thereof, and all other shipping records furnished by the carrier and the person ordering distribution or delivery of said tobacco products.

(d) Every distributing agent in Texas shall report to the Comptroller, on a form to be prescribed by the Comptroller and furnished by the distributing agent, each day excepting Sundays and holidays, all deliveries of tobacco products made by him on the preceding day or days. The report shall show the name of the person ordering the delivery, the date of delivery, and name and address of the person to whom delivered, the invoice number, the bill of lading or way bill number, the quantity and kind of tobacco products delivered, the means of delivery and/or the transportation agent and the designation of drop-shipment if a drop-shipment; provided, however, if the invoice furnished said distributing agent by the manufacturer or other person ordering such delivery, or the bill of lading prepared by said distributing agent to cover the shipment under said invoice, contains all the information required to be reported, it will be sufficient to send a copy of said invoice or invoices, or a copy of said bill of lading, or bills of lading, to the Comptroller daily.

#### **Art. 8.17 Penalties**

If any distributor, wholesale dealer, retail dealer or distributing agent shall (a) fail to keep any of the records required to be kept by the provisions of this Chapter, or (b) if any distributor, wholesale dealer or retail dealer shall sell any tobacco products upon which a tax is required to be paid by this Chapter without at the time having a valid permit, or (c) if any distributor, wholesale dealer or distributing agent shall fail to make any reports to the Comptroller required herein to be made, or (d) make a false or incomplete report to said Comptroller, or (e) if any distributing agent shall store any tobacco products, on which the tax has not been paid, in the State or distribute or deliver any tobacco products on which the tax has not been paid, within this State without at the time of said storage or delivery having a valid permit, or (f) if any person affected by this Chapter shall fail or refuse to abide by the provisions hereof or the rules and regulations promulgated hereunder, or violate the same, he shall forfeit to the State as a penalty, the sum of not less than Twenty-five Dollars (\$25) nor more than Five Hundred Dollars (\$500). Each day's violation shall constitute a separate offense and incur another penalty, which if not paid shall be recovered in a suit by the Attorney General in a Court of competent jurisdiction in Travis County, Texas, or in any other Court having jurisdiction.

#### **Art. 8.18 Inspection**

For the purpose of enabling the Comptroller to determine the tax liability of a distributor, wholesale dealer, retail dealer, distributing agent or any other person dealing in tobacco products or to determine whether a tax liability has been incurred, he shall have the right to inspect any

premises where tobacco products are manufactured, produced, made, stored, transported, sold, or offered for sale or exchange and to examine all of the records required herein to be kept or any other records that may be kept incident to the conduct of the tobacco products business of said distributor, wholesale dealer, retail dealer, distributing agent, or other person dealing in tobacco products. The said authorized officers shall also have the right as an incident to determining the said tax liability, or whether a tax liability has been incurred, to examine all stocks of tobacco products, and for the foregoing purpose said authorized officers shall also have the right to remain upon said premises for such length of time as may be necessary to fully determine said tax liability, or whether a tax liability has been incurred, and it shall be unlawful for any of the foregoing persons to fail to produce upon demand by the Comptroller any records required herein to be kept or to hinder or prevent in any manner the inspection of said records or the examination of said premises.

#### **Art. 8.19 Record of Carriers**

Every common and contract carrier transporting tobacco products in this State, whether in intrastate or interstate commerce, shall keep a complete record in Texas of all tobacco products so transported or handled which record shall show separately for each transaction the name of the consignor and consignee, the date of delivery, and the kind or quantity of tobacco products transported or handled. Such records together with all other books or records which may be in the custody of said carriers showing the shipment of tobacco products shall be open to the inspection at all times of the Comptroller, Attorney General, and their authorized representatives and said common and contract carriers shall give and permit such authorities free access to all such books and records and all tobacco products in the custody of such carrier.

#### **Art. 8.20 Unlawful Possession, Evidence**

Except as herein provided, it shall be unlawful for any person other than a distributor to have in his possession for sale, distribution or use, or for any other purpose, tobacco products upon which a tax is required to be paid by this Chapter, without having the proper evidence showing tax to be paid, and the absence of such evidence shall be notice to all persons that the tax has not been paid and shall be prima facie evidence of the non-payment of said tax.

No person, other than a common carrier, shall transport within this State tobacco products upon which a tax is required to be paid, without having evidence of tax payment on said tobacco products or shall fail or refuse, upon demand of the Comptroller, to stop any vehicle transporting tobacco products for a full and complete inspection of the cargo carried.

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

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

#### **Art. 8.21 Seizure, Sale by Comptroller**

All tobacco products on which taxes are imposed by this Chapter, which shall be found in the possession, or custody or within the control

of any person, for the purpose of being sold or removed by him in fraud of the Tobacco Products Tax Law, and all tobacco products which are removed or are deposited or concealed in any place with intent to avoid payment of taxes levied thereon, and any automobile, truck, boat, conveyance or other vehicle whatsoever, used in the removal or transportation of such tobacco products for such purposes, and all equipment, paraphernalia, or other tangible personal property incident to and used for such purposes, found in the place, building or vehicle where such tobacco products are found, may be seized by the Comptroller, with or without process, and the same shall be from the time of such seizure forfeited to the State of Texas, and a proceeding in the nature of a proceeding in rem shall be filed in a Court of competent jurisdiction in the county of seizure to maintain such seizure and declare and perfect said forfeiture as hereinafter provided. All such tobacco products, vehicles and property so seized as aforesaid, remaining in the possession or custody of the Comptroller, sheriff or other officer for forfeiture or other disposition as provided by law, shall be deemed to be in the custody of law and irrepleviable.

The Comptroller, when making the seizure aforesaid, shall immediately make a written report thereof showing the name of the agent or representative making the seizure, the place and person where and from whom such property was seized and an inventory of same and appraisal thereof at the usual and ordinary retail price of the article seized, which report shall be prepared in duplicate, signed by the agent or representative so seizing, the original of which shall be given to the person from whom said property is taken, and a duplicate copy of which shall be filed in the office of the Comptroller and shall be open to public inspection.

The Attorney General, or the district or county attorney of the county of seizure, shall, at the request of the Comptroller, file in the county and Court aforesaid forfeiture proceeding in the name of the State of Texas as plaintiff, and in the name of the owner or person in possession as defendant, if known, and if unknown, then in the name of said property seized and sought to be forfeited. Upon the filing of said proceeding, the Clerk of said Court shall issue notice to the owner or person in possession of such property to appear before such Court upon the date named therein, which shall not be less than two (2) days from service of such notice, to show cause why the forfeiture aforesaid should not be declared, which notice shall be served by the sheriff of said county. In the event the defendant in said proceeding is a non-resident of the State or his residence is unknown, or in the event the name of such defendant is unknown, upon affidavit by the Comptroller to this effect, notice or process shall be served or published in the mode and manner provided by existing Statutes for service of citation upon nonresidents or unknown defendants, provided, however, such proceeding may be heard at any time after ten (10) days from service of such process or the first publication of such notice. And in such cases, the Court shall appoint an attorney to represent such defendant, who shall have the rights, duties and compensation as provided by existing Statutes in cases of attorneys appointed to represent nonresidents and unknown defendants.

In the event final judgment is rendered in the forfeiture proceeding aforesaid, maintaining the seizure, and declaring and perfecting the forfeiture of said seized property, the Court shall order and decree the sale thereof to the highest bidder by the sheriff at public auction in the county of seizure, after ten (10) days notice by advertisement at least twice in any legal publication of such county, and the proceeds of such sale, less



expenses of seizure and Court costs, shall be paid into the State Treasury and shall be allocated as the tobacco products tax is herein allocated. In the event the district or county attorneys file and prosecute such cases, a fee of Fifteen Dollars (\$15) shall be paid to such officers in addition to all other fees allowed by law under the maximum fee bill, which fee shall be collected as Court costs out of the proceeds of such sale.

In lieu of the forfeiture proceeding aforesaid, the Comptroller may elect to sell the tobacco products and property seized by him in cases where such property appears by the report or receipt of the officer seizing same to be of the appraised value of Five Hundred Dollars (\$500) or less by the following summary proceedings:

(1) The Comptroller shall publish a notice in some newspaper of the county where the seizure was made, describing the property seized and stating the time, place and cause of their seizure, and requiring any person claiming such property, or any interest therein or thereto, to appear and make such claim within fifteen (15) days from the date of such publication of such notice.

(2) Any person claiming such property so seized or any interest therein or thereto, within the time specified in such notice, may file with the said Comptroller his claim, stating his interest in the property seized, and may execute a bond to the State of Texas in the penal sum of Two Hundred and Fifty Dollars (\$250), with sureties to be approved by said Comptroller, conditioned that, in case of the establishment of forfeiture of the articles so seized, the obligors shall pay all the costs and expenses of the proceeding to obtain such forfeiture; and upon the delivery of such bond to Comptroller, he shall transmit the same with a certified copy of the report or receipt of the property seized, filed in his office, to the Attorney General or the county or district attorney of the county of seizure, and forfeiture proceedings shall be instituted and prosecuted thereon in the court of competent jurisdiction as provided by law.

(3) If no claim is interposed and no bond is given within the time above specified, the Comptroller shall give ten (10) days notice of a sale of the property under seizure by publication two (2) times in a newspaper of the county of seizure, and, at the time and place specified in such notice, shall sell the property so seized at public auction, and after deducting expense of seizure, appraisal, custody and sale, he shall deposit the proceeds thereof in the State Treasury, which shall be allocated to the funds to which the Tobacco Products Tax levied hereunder is apportioned.

In the event the tobacco products seized hereunder and sought to be sold upon forfeiture, summary sale, or other process provided by law shall be non-tax paid, the officers selling the same shall, upon sale thereof, cause to be paid, the required tax and deduct the expense thereof from the proceeds of such sale.

#### Art. 8.22 Seizure or Sale no Defense

The seizure, forfeiture and sale of tobacco products and other property under the terms and conditions hereinabove set out, and whether with or without court action, shall not be or constitute any defense or exemption to the person owning or having control or possession of such property from criminal prosecution for any act or omission made or offense committed under this Chapter or from liability to pay penalties provided by this Chapter, with or without suit therefor.

#### Art. 8.23 Waiver permitted; Penalty

Jurisdiction is hereby conferred upon the Comptroller to waive any proceedings for the forfeiture of any of the property seized under the

provisions of this Chapter, or any part thereof, provided that the offender shall first pay the tax due on tobacco products seized, the amount and value of the tax necessary to represent the tax, and in addition to the tax required, pay into the State Treasury through the Comptroller a sum equal to the value of the tax required to be paid on such tobacco products. The said Comptroller may make a compromise with any claimant, before or after the claim is filed in court. A record of all such compromises and waivers of forfeiture shall be kept by the Comptroller and shall be open to public inspection. If upon examination of invoices or other investigation the Comptroller finds the tobacco products to be sold without having been tax paid as required in this Chapter, he shall have the power to require of such person, to pay into the State Treasury through him a sum equal to twice the amount of the tax due. If upon examination of invoices or other investigation, such person is unable to furnish evidence to the Comptroller of a report showing tax payment to cover non-tax paid tobacco products purchased by him, the prima facie presumption shall arise that such tobacco products were sold without reporting and remitting tax due.

#### **Art. 8.24 Disposition of Money**

All moneys collected by the Comptroller under the provisions of Article 8.23 of this Chapter, after payment of all cost and commissions, shall be paid to the Treasury and credited as the taxes imposed hereunder are credited.

#### **Art. 8.25 Duties of Comptroller; Rules and Regulations**

(a) It is hereby made the duty of the Comptroller to collect, supervise and enforce the collection of all taxes and penalties that may be due under the provisions of this Chapter and to that end the Comptroller is hereby vested with all of the power and authority conferred by this Chapter. Said Comptroller also shall have the power and authority to make and publish rules and regulations, not inconsistent with this Chapter or the other laws or the Constitution of this State, or of the United States, for the enforcement of the provisions of this Chapter and the collection of revenues hereunder. (b) The Comptroller shall promulgate rules and regulations providing for the allowance for credit of taxes paid on tobacco products where such tobacco products have become unfit for use or consumption, or unsaleable, and which tobacco products have been destroyed or returned to the manufacturer, upon proof satisfactory to the Comptroller that such tobacco products have become unfit for use or consumption or unsaleable and have been destroyed or returned to the manufacturer.

#### **Art. 8.26 Misdemeanors, Penalties**

(a) Whoever shall make a first sale of any cigars or any tobacco products without the tax having been paid or accounted for by a distributor holding a valid distributor's permit or (b) whoever shall sell, offer for sale, or present as a prize or gift any tobacco products on which the tax has not been paid or accounted for by a distributor holding a valid distributor's permit, or (c) whoever shall knowingly consume, use or smoke any tobacco products upon which a tax is required to be paid without said tax having been paid, or accounted for by a distributor holding a valid distributor's permit, or (d) whoever possesses in violation of any provision of this Chapter tobacco products upon which a tax in an amount of not more than Fifty Dollars (\$50) is required to be paid, or (e) whoever

shall use any artful device or deceptive practice to conceal any violation of this Chapter, or (f) whoever shall mislead the Comptroller in the enforcement of this Chapter, or (g) whoever shall refuse to surrender to the Comptroller upon demand any tobacco products possessed in violation of any provision of this Chapter, or (h) whoever as distributor, or as agent, employee or representative of a distributor, shall make a first sale of any tobacco products without at the time of said first sale having a valid permit, or (i) shall make a first sale without at the time of said first sale having a permit posted so as to be easily seen by the public, or (j) whoever as a distributor, wholesale dealer, or the agent, employee or representative of a distributor or wholesale dealer, shall fail to deliver an invoice required by law to be delivered to a purchaser of tobacco products, or (k) whoever as wholesale dealer or retail dealer or the agent, employee or representative of a wholesale dealer or retail dealer, shall sell tobacco products without at the time of said sale having a valid permit, or (l) shall sell tobacco products without at the time of said sale having a permit posted so as to be easily seen by the public, or (m) whoever as distributing agent shall store or distribute tobacco products on which the tax has not been paid without at the time of said storage or distribution having a valid distributing agent's permit, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200).

#### Art. 8.27 Felonies, Penalties

(a) Whoever shall knowingly transport any tobacco products upon which a tax is required to be paid without said tax having been paid, or accounted for by a distributor holding a valid distributor's permit, or (b) while transporting tobacco products shall willfully refuse to stop the motor vehicle he is operating when called upon to do so by a person authorized to stop said motor vehicle, or (c) refuse to permit a full and complete inspection of his cargo by said authorized person, or (d) whoever shall refuse to permit a full and complete inspection by said authorized person of any premises, where cigarettes are manufactured, produced, made, stored, transported, sold or offered for sale or exchange, or (e) whoever shall possess in violation of any provision of this Chapter tobacco products upon which a tax in an amount of more than Fifty Dollars (\$50) is required to be paid, or (f) whoever as distributor or a distributing agent, or as the agent, employee, or representative of a distributor or distributing agent, shall knowingly make, deliver to and file with the Comptroller a false return or report, or an incomplete return or report, or (g) whoever shall knowingly fail to make and deliver to the Comptroller a return or report as required by the provisions of this Chapter to be made, or (h) whoever as distributor, wholesale dealer, retail dealer or distributing agent, or as the agent, employee, or representative of a distributor, wholesale dealer, retail dealer or distributing agent, shall destroy, mutilate or secrete any of the books or records required herein to be kept, or (i) shall refuse to permit the Comptroller or the Attorney General to inspect, examine and audit any books and records required herein to be kept, or any other records incident to the conduct of the tobacco products business that may be kept, or (j) shall knowingly make any false entry or fail to make entries in the books and records required by the provisions of this Chapter to be kept by a distributor, wholesale dealer, retail dealer or distributing agent, or (k) shall fail to keep for a period of two (2) years in Texas any books and records required herein to be kept by a distributor, wholesale dealer, retail dealer or distributing agent, shall be guilty

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

Provided that if any penalties prescribed elsewhere in this Chapter overlap as to offenses which are also punishable under Article 8.27 of this Chapter, then the penalties prescribed by this Article 8.27 shall apply and control all other penalties.

#### **Art. 8.28 Venue for Felonies**

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

#### **Art. 8.29 Fees for New Permits Prorated**

Permits required by Articles 8.06, 8.08 and 8.16 of this Chapter issued after the effective date of this Chapter shall expire the last day of February following issuance. From the effective date of this Chapter the Comptroller shall prorate the fees for new permits required by Articles 8.06 and 8.16 of this Chapter by allowing a discount computed by quarters of the licensing year. The permit year shall be from the first day of March through the last day of February.

Each permit holder required to obtain a permit under Articles 8.06, 8.08 and 8.16 of this Chapter who fails to obtain a renewal permit prior to the beginning of the licensing year shall pay in addition to the permit fee a late application fee of One Dollar (\$1), which shall be paid to the Comptroller at the time the permit fee is paid.

When it is necessary for any authorized representative of the Comptroller to visit any permit holder to collect a permit fee due under this Chapter the permit holder shall pay a service fee of Five Dollars (\$5) in addition to the permit fee.

#### **Art. 8.30 Floor Stocks Taxed, Rate of Tax, Penalty**

Every person having possession of any tobacco products taxable under this Chapter for the purpose of sale on the effective date of this Chapter shall immediately inventory the same and file a report of such inventory with the Comptroller of Public Accounts and attach to such inventory a cashier's check payable to the State Treasurer in a sum equal to the tax due on such tobacco products computed at the rates provided in this Chapter. Such person shall retain as a receipt to evidence payment of the tax a purchaser's copy of the cashier's check and shall retain a copy of the inventory reported to the Comptroller.

Failure or refusal to render such inventory shall be deemed sufficient grounds for refusal by the Comptroller to issue a permit required by this Chapter, and in addition thereto, any person failing or refusing to render such inventory shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than One Hundred Dollars (\$100) nor more than One Thousand Dollars (\$1,000).

#### **Art. 8.31 Exemption of Certain Retailers From Permit and Bond**

The permit and bond required under Articles 8.07 and 8.08 of this Chapter shall not be required from any retailer, as that term is defined herein, who pays a store tax to this State, and who certifies to the Comptroller at the time this Act becomes effective and at each time such retailer pays a store tax that he sells items taxed under this Chapter.

## CHAPTER 9

## MOTOR FUEL (GASOLINE) TAX

## Art.

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## Art. 9.01 Definitions

The following words, terms and phrases shall, for all purposes of this Chapter, be defined as follows:

(1) "Motor Fuel" shall mean all products commonly or commercially known or sold as gasoline, including natural, absorption, casinghead and drip gasolines, regardless of their classification or uses.

(2) "Motor vehicle" shall mean and include any automobile, truck, tractor, bus, vehicle, engine, machine, mechanical contrivance, or other conveyance which is propelled by an internal combustion engine or motor.

(3) "Vehicle tanks" shall mean an assembly used for the transportation, hauling, or delivery of liquids, comprising a tank, which may be one compartment or may be subdivided into two (2) or more compartments, mounted upon a wagon, automobile, truck, or trailer, together with its accessory piping, valves, meter, etc. The term "compartment" shall be construed to mean the entire tank whenever this is not subdivided; otherwise, it shall mean any one of those subdivided portions of the tank which is designed to hold liquid.

(4) "Distributor" shall mean and include every person who refines, distills, manufactures, produces, or compounds motor fuel or blending materials in this State, or imports or causes to be imported motor fuel

or blending materials into this State, or in any other manner acquires or possesses said products, for the purpose of making a first sale, distribution or use of said products in this State; and said term shall also mean and include any wholesale dealer or jobber of motor fuel who desires to purchase motor fuel without paying the tax to the distributor selling said products when the motor fuel is purchased for taxable resale, distribution, or use thereof by said wholesale dealer or jobber in this State. The said term shall also include any person who produces or is responsible for the production of the product commonly known as "drip gasoline" unless said drip gasoline is totally destroyed, burned, or otherwise rendered incapable of use as motor fuel or blending material.

(5) "Distribution" shall mean and include any transaction, other than a sale, in which ownership or title to motor fuel, or any derivative of crude oil or natural gas, passes from one person to another.

(6) "Person" shall mean and include every individual, firm, association, joint stock company, syndicate, copartnership, corporation (public, private, or municipal), trustee, agency, or receiver.

(7) "Dealer" shall mean and include every person other than a distributor who engages in the business in this State of distributing or selling motor fuel within this State.

(8) "Public highway" shall mean and include every way or place of whatever nature open to the use of the public as a matter of right for the purpose of vehicular travel, and notwithstanding that the same may be temporarily closed for the purpose of construction, maintenance, or repair.

(9) "Comptroller" shall mean Comptroller of Public Accounts of the State of Texas.

(10) "First sale" shall mean, except as otherwise provided herein, the first sale or distribution in this State of motor fuel, produced, refined, compounded, imported into, or otherwise acquired in said State; provided that when motor fuel has been purchased tax free under the terms of this Chapter, the first resale or distribution of said motor fuel for any purpose other than a tax free sale duly authorized as such by the Comptroller shall, for the purposes of this Chapter, mean and constitute a "first sale."

(11) "Refund Motor Fuel" shall mean motor fuel used, sold, or disposed of for any purpose for which a refund of the tax paid thereon is authorized by law. And any motor fuel so used or disposed of shall be construed to have been used or disposed of for "refund purposes."

(12) "Refund Dealer" shall mean any dealer, distributor, or other person who engages in the selling of refund motor fuel, or who appropriates for his own use and consumption motor fuel on which a refund of the tax paid on such motor fuel is authorized by this Chapter.

(13) The term "tax-free," as applied to the sale or purchase of motor fuel, shall mean the sale or purchase of said motor fuel on authority granted by the Comptroller under the terms of this Chapter without collecting or paying the tax on said sale or purchase.

#### **Art. 9.02 Rate of Tax; Allowances for Handling and Evaporation**

(1) There shall be and is hereby levied and imposed (except as hereinafter provided) upon the first sale, distribution, or use of motor fuel in this State an excise tax of five cents (5¢) per gallon or fractional part thereof so sold, distributed, or used in this State. Every distributor who makes a first sale or distribution of motor fuel in this State for any purpose whatsoever shall, at the time of such sale or distribution, collect the said tax from the purchaser or recipient of said motor fuel, in addition

to his selling price, and shall report and pay to the State of Texas the taxes collected at the time and in the manner as hereinafter provided. Every such distributor shall also be liable to the State of Texas for the said tax of five cents (5¢) per gallon on each gallon of motor fuel or fractional part thereof used or consumed by him, and shall report and pay said tax as hereinafter provided. In each subsequent sale or distribution of motor fuel upon which the tax of five cents (5¢) per gallon has been collected, the said tax shall be added to the selling price, so that such tax is paid ultimately by the person using or consuming said motor fuel for the purpose of generating power for the propulsion of any motor vehicle upon the public highways of this State.

It is the intent and purpose of this Article to collect the tax levied herein at the source of said motor fuel in Texas or as soon thereafter as the same may be subject to being taxed. No person, however, shall be required to pay a tax on motor fuel brought into this State in a quantity of thirty (30) gallons or less in a fuel tank, with a capacity of not more than thirty (30) gallons, when said fuel is connected with and feeds the carburetor of said motor vehicle and the motor fuel contained therein is used in the operation of said motor vehicle and not otherwise.

(2) Provided, that the tax on one and one half per cent ( $1\frac{1}{2}\%$ ) of the taxable gallons of motor fuel sold or distributed in this State shall be allocated to the persons selling, distributing, or handling said motor fuel or the taxes collected thereon, which said allocation or allowance shall be deducted in the payment of said tax to the State of Texas in the following manner: The tax on one and one half per cent ( $1\frac{1}{2}\%$ ) of said taxable gallonage shall be deducted by the distributor who refines, imports into, or produces motor fuel in Texas and makes the first taxable sale or distribution thereof; the tax on one and four-tenths per cent ( $1\frac{4}{10}\%$ ) of said taxable gallonage shall be deducted by the distributor who purchases motor fuel tax free from another licensed distributor under authority issued by the Comptroller and makes a taxable resale or distribution thereof; and one-tenth of one per cent ( $\frac{1}{10}$  of 1%) of the tax collected upon the resale or distribution of motor fuel purchased tax-free by a distributor shall be set aside in the State Treasury for use by the Comptroller as hereinafter provided.

The above allocation or allowances shall be for ordinary evaporation and other handling losses, not provided for in this Chapter from the time of the first sale or distribution of motor fuel in this State until its ultimate delivery to the person using or consuming said motor fuel and for the expense of collection, accounting for, reporting and handling such motor fuel and the taxes collected thereon, and shall be apportioned among all persons selling, distributing or handling motor fuel or the tax collected thereon in this State as follows:

I. One half of one per cent ( $\frac{1}{2}$  of 1%) to the distributor who refines, imports into, or produces motor fuel in Texas and makes the first taxable sale or distribution of said motor fuel in this State;

II. One half of one per cent ( $\frac{1}{2}$  of 1%) to the wholesaler or jobber who pays the tax to a distributor on motor fuel purchased for resale or distribution to retailers;

III. One half of one per cent ( $\frac{1}{2}$  of 1%) to the retailer or other person making a sale or distribution of such motor fuel to the person using or consuming said motor fuel;

IV. Provided that the tax on nine-tenths of one per cent ( $\frac{9}{10}$  of 1%) of said taxable gallonage shall be apportioned to a distributor who performs functions both as a distributor and as a wholesaler or jobber by paying over to the State of Texas taxes collected upon the resale or

distribution of motor fuel which has been purchased tax-free under authority issued by the Comptroller and thereafter resold or distributed at wholesale to retailers;

V. One-tenth of one per cent ( $\frac{1}{10}$  of 1%) of the taxes collected and paid over to the State upon the resale or distribution of motor fuel purchased tax-free by a distributor under authority issued by the Comptroller shall be allocated to and set aside in the State Treasury for use by the Comptroller in the administration and enforcement of the provisions of this Article. Any funds allocated and appropriated for administration and enforcement unspent at the end of each fiscal year shall be allocated in the same manner as is the motor fuel tax after administrative and enforcement allocations.

In the distribution of motor fuel in this State if any person performs more than one (1) of the functions or activities referred to above (distributor, wholesaler or jobber, and retailer), then he shall be entitled to the apportionment or allowance for each such function or activity, subject to the limitations prescribed for each such function or activity, and provided that the aggregate allowance shall never exceed the total amount authorized herein for all three (3) functions or activities, provided further, if sales or distributions of motor fuel are made between wholesalers, jobbers, or distributors between the first sale made at source of said motor fuel in Texas and its sale to the retailer, then the aggregate allowances shall never exceed one and one half per cent ( $1\frac{1}{2}\%$ ).

Nothing contained herein shall be construed as entitling any person using or consuming motor fuel in this State to any portion of said allocation or allowance.

Pursuant to rules and regulations to be prescribed by the Comptroller the allocation or allowance hereinabove provided shall be distributed to the persons entitled thereto as follows: (1) Every distributor who makes a first sale or distribution of motor fuel to a wholesaler, jobber, or another distributor, upon which said first sale or distribution the tax is required to be collected and paid over to this State shall, after setting out the tax separately on the manifest as required by this Chapter, deduct one per cent (1%) from the amount of such tax and the balance shall be the amount such distributor shall be entitled to collect from such purchaser; and (2) every wholesaler, jobber or distributor who makes a sale, resale, or distribution of motor fuel upon which the tax is required to be collected, to a retailer of said motor fuel shall, after setting out the tax separately on the manifest as required by this Chapter, deduct one half of one per cent ( $\frac{1}{2}$  of 1%) from the amount of such tax and the balance shall be the amount such wholesaler, jobber or distributor shall be entitled to collect from such purchaser.

(3) The tax herein imposed shall be posted separately from the price of the motor fuel, wherever sold in this State.

(4) No tax shall be imposed upon the sale, use, or distribution of any motor fuel, the imposing of which would constitute an unlawful burden on interstate commerce, and no tax shall be imposed upon the sale of any motor fuel for export from the State of Texas (including both sales in interstate and foreign commerce) where the motor fuel is delivered to a common carrier, ocean-going vessel (including ship, tanker or boat), or a barge, and is moved forthwith outside of this State. Provided, however, that the Comptroller may require satisfactory evidence of any such sale, use, distribution or delivery. In the event this Article is in conflict with the Constitution of the United States or any Federal law, with respect to the tax levied upon the first sale, distribution, or use of motor fuel in this State, then it is hereby declared to be the intention



of this Article to impose the tax levied herein upon the first subsequent sale, distribution, or use of said motor fuel which may be subject to being taxed.

(5) Provided, that the tax imposed herein shall be in lieu of any other excise or occupational tax imposed by the State or any political subdivision thereof on the sale, use, or distribution of motor fuel.

### Art. 9.03 Reports

(1) Every distributor who shall be required to collect the tax levied by this Chapter upon the first sale or distribution of motor fuel in this State, or who shall be required to pay the tax levied herein upon motor fuel used by said distributor, shall upon or before the 25th day of each calendar month remit or pay over to the State of Texas at the office of the Comptroller at Austin, Travis County, Texas, the amount of such tax required to be collected during the calendar month next preceding and the amount of such tax required to be paid upon motor fuel used by said distributor during said preceding calendar month, and at the same time, such distributor shall make and deliver to the Comptroller at his office in Austin, Travis County, Texas, a report properly sworn to and executed by such distributor, or his representative in charge, which shall show the date said report was executed, the name and address of said distributor, and the month which the report covers, and which report shall show separately by gallons the motor fuel on hand at the beginning and at the end of the month, and complete information of all motor fuel handled during the month, including motor fuel purchased or received in interstate commerce, motor fuel purchased or received in intrastate commerce, reflecting separately the quantity received with the tax paid and the quantity received without the tax having been paid, motor fuel refined, motor fuel acquired by blending, motor fuel sold in interstate commerce, motor fuel sold in intrastate commerce, motor fuel sold and exported, motor fuel sold to the United States Government, motor fuel sold to a distributor for further refining, processing, blending, or for exportation upon which no tax was collected, motor fuel lost by fire or other accident, motor fuel lost by refinery shrinkage, evaporation, or other losses, and motor fuel used and consumed by the distributor and his representatives. The said report shall also show complete information by gallons of all blending materials purchased, acquired, sold, used, and lost by fire or otherwise, during the month the report covers, and the beginning and ending inventories of such blending materials. Said report shall also show a complete record of the number of barrels of crude oil refined and the number of cubic feet of gas processed. Provided that where a qualified distributor has not sold, used, or distributed any motor fuel during any month or part thereof, he shall nevertheless file with the Comptroller the report required herein setting forth such fact or information. Provided further, that the Comptroller may prepare and furnish a form prescribing the order in which the information required herein shall be set up on said monthly report, but the failure of any distributor to obtain such form from said Comptroller shall be no excuse for the failure to file a report containing all the information required to be reported herein. Every distributor, at the time of making said report, shall attach legal tender thereto or make proper form of money order or exchange payable to the State Treasurer in the amount of tax for the period covered by the report.

(2) Provided further, that every person selling motor fuel in export or interstate commerce only, and every person selling motor fuel upon which no tax is required to be paid under the provisions of this Chapter,

shall nevertheless be required to keep the same records and make the same reports to the Comptroller, accounting for the motor fuel so sold, that the provisions of this Chapter require a distributor to keep and make.

(3) If any distributor shall fail to remit proper taxes collected upon the first sale or distribution of motor fuel, or taxes due upon the use of motor fuel in Texas, the Comptroller may employ auditors or other persons to ascertain the correct amount due, and if such taxes have not been properly remitted and paid to the State of Texas, the distributor shall pay as additional penalty any reasonable expenses included by the Comptroller in such audit. Provided, however, that all funds paid to the auditors of the Comptroller as expenses incurred in making audits shall be placed in a special fund in the State Treasury, which shall be used until exhausted for making other audits, and said sums are hereby appropriated for that purpose. Provided that nothing herein shall prevent the Comptroller, when said fund is exhausted, from using other funds available for that purpose.

(4) When it shall appear that a distributor to whom the provisions of this Chapter shall apply has erroneously reported and remitted or paid more taxes than were due the State of Texas upon any motor fuel during any taxpaying period, either on account of a mistake of fact or law, it shall be the duty of the Comptroller to credit the total amount of taxes due by such distributor for the current period with the total amount of taxes so erroneously paid. Such credit shall be allowed before any penalties and interest shall be applicable.

#### Art. 9.04 Penalties

(1) All taxes collected hereunder by any distributor, or by any director, officer, agent, employee, trustee, receiver of such distributor, or by any person, shall be for the use and benefit of the State of Texas, and shall be paid to the State of Texas as provided in this Chapter.

(2) If any such distributor or any director, officer, agent, employee, trustee, receiver of such distributor, or any person, shall wilfully fail or refuse to pay to the State of Texas any such tax funds collected under the provisions of this Chapter, on or before the date such payment is due as provided by this Chapter, such distributor or such director, officer, agent, employee, trustee, receiver of such distributor, or such person, shall be guilty of a felony and shall be punished by confinement in the state penitentiary for not more than ten (10) years, or by confinement in the county jail for not less than one (1) month nor more than one (1) year, or by a fine of not less than Five Hundred Dollars (\$500) nor more than Ten Thousand Dollars (\$10,000), or by both such fine and jail imprisonment.

(3) If any director, officer, agent, employee, trustee, receiver of any distributor, or any person, shall fraudulently misapply or convert to his own use any tax fund collected for the State of Texas under the provisions of this Chapter by such distributor, or any director, officer, agent, employee, trustee, receiver of such distributor, or by such person, which said money has come into the possession of or that is in the care of or under the control of such director, officer, agent, employee, trustee, receiver of such distributor, or of such person, and which said money is required to be paid to the State of Texas under the provisions of this Chapter, such director, officer, agent, employee, trustee, receiver of such distributor, or such person shall be guilty of a felony and upon conviction, shall be punished by confinement in the state penitentiary for not more than ten (10) years, or by confinement in the county jail for not

less than one (1) month nor more than one (1) year, or by a fine of not less than Five Hundred Dollars (\$500), nor more than Ten Thousand Dollars (\$10,000), or by both such fine and jail imprisonment.

#### Art. 9.05 Tax-Free Sales

(1) The Comptroller may authorize and permit any person producing natural gasoline, casinghead gasoline or drip gasoline, or any derivative or condensate of crude oil or natural gas, in their natural and unrefined state, or any nonoperating interest owner in a gasoline plant, or any person operating a pipeline as a common carrier, or any licensed distributor of motor fuel in this State to make a sale, resale, or distribution of such products or of motor fuel, without collecting the tax levied herein, to any distributor holding a valid permit under the terms of this Chapter, when such distributor purchasing the same has, in the opinion of the Comptroller, a satisfactory and sufficient bond, and when the product is sold and purchased for the purpose of exportation, further refining, further processing, further treating, blending or compounding with other products to produce motor fuel, or non-motor fuel products, or for resale to the Federal Government for the exclusive use of said Federal Government, or for resale for some one (1) or more of such purposes and not otherwise.

(2) The Comptroller may also authorize and permit any licensed distributor to make sales or distributions of motor fuel without collecting the tax to any other licensed distributor purchasing said motor fuel for resale or distribution of said product at wholesale when said other licensed distributor holds a valid distributor's permit and has, in the opinion of the Comptroller, a satisfactory and sufficient bond to justify such tax-free purchases.

Every such distributor who shall be authorized and permitted to purchase motor fuel without paying the tax thereon for the purpose of resale or distribution of said products at wholesale, shall collect and pay over to the State of Texas at the time and in the manner provided in this Chapter, a tax at the rate of five cents (5¢) per gallon upon the first sale or distribution of said motor fuel made thereafter for any purpose other than a tax-free sale authorized by the Comptroller, and shall pay said tax at the rate aforesaid upon each gallon of motor fuel used or unaccounted for by said distributor during the calendar month next preceding the month said tax payment is required to be made, it being the intent hereof that said distributor shall on or before the 25th day of each calendar month report and pay to the State of Texas all taxes due on motor fuel purchased tax-free and thereafter sold, resold, distributed, used or unaccounted for during the calendar month next preceding. Any motor fuel purchased tax-free which is unaccounted for at the end of each calendar month shall be prima facie presumed to have been sold or used for taxable purposes.

The Comptroller may, upon request from any distributor, issue a certificate of authority to make sales of motor fuel without collecting the tax, under the terms and conditions provided in this Chapter, which certificate shall show the date issued, the names of the seller and purchaser of said motor fuel, the quantities authorized, and the period of time and the conditions under which said motor fuel may be sold and distributed tax-free to the purchaser thereof, and any distributor who shall make sales of motor fuel in Texas without holding a valid certificate of authority or who shall make sales of motor fuel in excess of the quantities authorized shall be liable for the tax imposed upon the first sale or

distribution of said motor fuel. The certificate of authority to make tax-free sales of motor fuel shall be subject to revocation for failure or refusal by the seller or purchaser of said motor fuel to comply with any provisions of this Article or any rule and regulation duly promulgated by the Comptroller, or for the violation of the same, and said certificate of authority shall be revoked forthwith upon the failure of any distributor to report and pay all taxes due and owing the State of Texas within the time prescribed by this Article, or at the time fixed by the Comptroller for making periodical reports and tax payments, and no further tax-free sales shall be made to a distributor named in any certificate of authority after said certificate has been revoked until such certificate has been reinstated or a new certificate of authority has been issued.

(3) Provided further, that any producer, pipeline operator, or licensed distributor who shall make any sale or distribution of motor fuel as provided herein, shall be required to make and keep all the records and manifests required of a distributor in Article 9.09, and shall be required to make and file with the Comptroller the return or report required by Article 9.03, showing all the information set out therein. When motor fuel is sold or distributed tax-free under authority issued by the Comptroller, the manifest required to be issued shall bear the notation that said product is sold for the purpose of resale to the Federal Government, exportation, further refining, blending, or resale at wholesale, whichever the case may be. Provided, further, that every producer and every pipeline operator shall qualify as a licensed distributor before selling the products named herein to any person other than a licensed distributor. All sales and distributions made without collecting the tax levied herein shall be made subject to any rules and regulations promulgated by the Comptroller.

(4) All taxes collected under the provisions of this Chapter shall be for the use and benefit of the State of Texas and shall not be appropriated or diverted to any other use. Said taxes shall be paid over to the State at the time and in the manner provided in this Chapter.

(5) It is the intent of this Article that when a certificate of authority has been issued to a licensed distributor to make tax-free sales to another licensed distributor, said sales shall be tax-free within the limitations set out in said certificate of authority.

#### **Art. 9.06 Application for Distributor's Permit**

(1) From and after the effective date of this Chapter, all distributors of motor fuel in this State now engaged, or who desire to become engaged, in the sale, use, or distribution of motor fuel upon which the tax levied herein is required to be paid, shall file a duly acknowledged application for motor fuel distributor's permit with the Comptroller on a form prescribed by him, to be furnished upon written request, the failure to furnish which shall be no excuse for the failure to file the same unless an absolute refusal is shown. Said form shall set forth the name under which such distributor transacts or intends to transact such business as distributor, the principal office, residence, or place of business in Texas, and if other than an individual, the principal officers of a corporation or the members of a partnership or association and their office, street, or post office addresses. The Comptroller may require in said application such other information as he may desire. Except as authorized in Article 9.05 of this Chapter no distributor shall make a first sale, use, or distribution of motor fuel until such application has been filed and a permit has been obtained.

(2) Upon receipt of the application and the bond hereinafter provided for, the Comptroller shall issue to every distributor a nonassignable, consecutively numbered permit authorizing the first sale, use, or distribution of motor fuel, or its substitute, in this State from the date of the issuance of said permit, until and including the following December 31st. On or before January 1st of each year, and before any distributor shall make a first sale, use, or distribution of motor fuel, or engage in selling motor fuel in this State after December 31st, an application shall be filed and a permit obtained for the calendar year. Said permit shall provide that the same is revocable and shall be cancelled upon violation of any provisions of this Chapter, or any rule or regulation adopted by the Comptroller. If such permit is cancelled or suspended, said distributor shall not sell, use, or distribute motor fuel upon which a tax is required to be paid until a new permit is granted or the original permit is reinstated. Provided, however, that no permit shall be issued or reinstated where it appears from a duly verified audit made as herein provided by an authorized representative of the Comptroller that the applicant is delinquent in the remittance or payment of any motor fuel tax, penalty, or interest under the provisions of this Chapter.

#### Art. 9.07 Bond

(1) Before any permit shall be issued and before engaging in the first sale, use, or distribution of motor fuel, upon which a tax is required to be paid in Texas, every distributor shall execute and file with the Comptroller a good and sufficient surety bond, which shall run concurrently with the permit required of a distributor to be obtained. The said bond shall be signed by said distributor and a good and sufficient surety company or companies authorized to do business in this State, to be approved by the Comptroller, and except as hereinafter provided, in an amount not less than One Thousand Dollars (\$1,000) nor more than Fifty Thousand Dollars (\$50,000), payable to the State of Texas, and conditioned upon the full, complete, and faithful performance by the distributor of all the conditions and requirements imposed upon him by this Chapter, or the rules and regulations of the Comptroller promulgated hereunder, on a form to be prescribed by the Comptroller with the approval of the Attorney General, expressly providing for the performance of said obligations and the remittance and/or payment at Austin, Travis County, Texas, of all taxes collected and required to be collected for the use and benefit of the State, and all other taxes due and accruing upon the use of motor fuel by said distributor, and all costs, penalties, and interest provided in this Chapter; provided, however, that in any event the total of all recoveries under such bond for any and all breaches of its conditions occurring at any time while it remains in force to support a permit, shall not for any calendar year exceed the penal sum named therein; provided further, that any such bond, continuous in form, may be, if sufficient and acceptable to the Comptroller, continued in effect by a renewal certificate, and, if so continued in effect, shall be sufficient to support the issuance of any new permit; and provided further, that the said renewal certificate, as, if and when issued shall have all the force and effect of an original bond for the calendar year for which renewal certificate is issued. The amount of any bond required of any distributor shall be fixed by the Comptroller, and subject to the limitations herein provided, additional bond may be required by the Comptroller at any time an existing bond becomes insufficient, unsatisfactory, or unacceptable. However, the distributor may demand a reduction of his bond after six (6) months from the effective date thereof to a sum to be not more than three (3) times

the highest tax said distributor has collected and paid to the State for any month during the preceding six (6) months, or the highest tax that could accrue on motor fuel purchased tax-free during any said month, but which shall never be less than the minimum aforesaid.

Provided, that when a distributor or other person produces, manufactures, refines, or acquires in any other manner any product of petroleum or natural gas for his own use and consumption as motor fuel and not to be sold or distributed, the Comptroller may accept a minimum bond in an amount of not less than Five Hundred Dollars (\$500); said bond to be in the form and substance and conditioned as hereinabove provided.

(2) The Comptroller shall have the right, if, in his opinion, the amount of any existing bond shall become insufficient or any surety on a bond shall become unsatisfactory or unacceptable, to require the filing of a new or an additional bond. When said new bond has been furnished, the Comptroller shall cancel the bond for which said new bond is substituted. No recoveries on any bond or execution of any new bond or renewal of a permit shall invalidate any bond. A new bond may be demanded when any new permit is issued or revived, but no revocation or revival shall affect the validity of any bond. Provided further, that the Comptroller shall have the authority to require any distributor to make reports and remit to the State for taxes collected by him, or taxes accruing on motor fuel used by him, at shorter intervals than one (1) month at any time any maximum bond shall, in the opinion of said Comptroller, become insufficient. Should any distributor fail or refuse to supply a new or additional bond within ten (10) days after demand, or shall fail or refuse to file reports and remit or pay the said tax at the intervals fixed by the Comptroller, said distributor's permit shall be cancelled by the Comptroller as herein provided.

(3) Any surety on any bond furnished by any distributor as above provided shall be released and discharged from any and all liability to the State of Texas accruing on such bond after the expiration of thirty (30) days from the date upon which such surety shall have lodged with the Comptroller written request to be released and discharged. Provided, however, that such request shall not operate to relieve, release or discharge such surety from any liability already accrued, or which shall accrue before the expiration of said thirty-day period. The Comptroller shall promptly on receipt of notice of such request notify the distributor who furnished such bond, and unless such distributor shall within fifteen (15) days from the date of said notice, file with the Comptroller a new bond with a surety company duly authorized to do business under the laws of the State, in the amount and form hereinbefore in this Article provided, the Comptroller shall proceed to cancel the permit of said distributor in the manner herein provided. If such new bond shall be furnished by said distributor as above provided, the Comptroller shall cancel and surrender the bond for which such new bond is substituted.

(4) That in lieu of giving a bond, any distributor may deposit in the Suspense Account of the State Treasury money in the amount of the bond that may be required, which shall never be released until securities are substituted for the same, or a bond executed in lieu thereof, or until the Comptroller has made a complete and thorough investigation and authorized the same to be released; and, provided, in lieu of cash or bond required by this Article, such distributor may deposit securities with the Comptroller, that shall be acceptable to him. Said securities shall be placed in the Treasury as other securities, but in all events, shall be of the same class as the funds of The University of Texas may be legally invested in. Provided, however, that if, in the opinion of the Comptroller,

the cash or securities so deposited shall become insufficient for the purpose for which they were deposited, he shall demand additional cash or securities, and upon the failure or refusal of distributor to supply the additional cash or securities within ten (10) days after demand, the Comptroller shall cancel the distributor's permit as herein provided. When default of payment of taxes collected upon the sale or distribution of motor fuel and accruing upon the use of motor fuel by said distributor, is made by any distributor who has money and/or securities deposited with the State Treasurer in lieu of a bond as herein provided, suit shall be instituted by the State, and after the State has established its debt for delinquent taxes by final judgment of Court, money on deposit in suspense account shall be withdrawn therefrom and shall be used to pay off and satisfy such judgment; and provided further, if securities are on deposit with the State Treasurer, such securities shall be sold by the Comptroller, and the proceeds of sale shall be used in paying off and satisfying said judgment and accrued Court costs and interest. Provided, however, the defaulting distributor may acknowledge in writing the correctness of the State's claim for taxes, costs, and penalties, and may authorize the withdrawal of said money or securities to pay on said claim without having suit filed.

Provided further, that the cash or securities, or any unpaid portion thereof, deposited by said distributor in lieu of surety bond, shall not be returned or refunded to any person except the distributor, unless the person claiming any right, title, and interest in and to said funds or securities, shall have declared said right, title, and interest in writing, executed jointly by said distributor and said claimant, under oath, and filed with the Comptroller at the time such deposit was made. Provided further, that suit may be filed against any surety or sureties on any bond furnished by a distributor, without first resorting to or exhausting the assets of said distributor or without making said distributor, as principal obligor in said bond, a party to said suit.

#### Art. 9.08 Lien

All taxes, penalties, interest and costs due by any distributor under the provisions of this Chapter and all taxes collected and required to be paid by said distributor to the State, shall be secured by a preferred lien, first and prior to any and all other existing liens, contractor statutory, legal or equitable, and regardless of the time such liens originated, upon all the property of any distributor, devoted to or used in his business as a distributor, which property shall include refinery, blending plants, storage tanks, warehouses, office building and equipment, tank trucks or other motor vehicles, stocks on hand of every kind and character whatsoever used or usable in such business, including crude oil or other materials for the manufacture, refining, blending, or compounding of motor fuels and the refined products therefrom, and the proceeds from the sale of such materials and refined products, including cash on hand and in bank, accounts and notes receivable, and any and all other property of every kind and character whatsoever and wherever situated devoted to such use, and each tract of land on which such refinery, blending plant, tanks, or other property is located, or which is used in carrying on such business.

This lien shall not be valid as against any "mortgagee" of a "motor vehicle" as those terms are defined in the Certificate of Title Act, provided such mortgagee does not have actual notice of the State's lien and has complied with the provisions of the Certificate of Title Act prior to the filing by the Comptroller of Public Accounts with the State High-

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way Department a certificate showing the make, body type and motor number of the motor vehicle upon which a tax lien exists and the amount of the taxes, penalties, interests, and costs due the State. The Comptroller of Public Accounts' certificate is to be filed with the State Highway Department and the State's Lien need not be placed of record upon the motor vehicle's certificate of title.

The Comptroller of Public Accounts shall file with the State Highway Department a certificate containing the information above provided in this Article as to any motor vehicle upon which a tax lien exists to secure the payment of the taxes owing by any distributor, and the filing of such certificate by the Comptroller of Public Accounts shall constitute sufficient notice of the existence and the assertion by the State of the statutory lien to secure the payment of the taxes owing to the State by such distributor, and any mortgagee of any mortgage, made after the filing of such certificate with the State Highway Department, shall be deemed to have notice of such lien, and the State's lien upon such motor vehicle shall continue to be a valid and prior lien as to any mortgagee. But such lien shall not be valid as to any mortgagee of a motor vehicle if the lien of such mortgagee was created and recorded prior to the filing of such certificate by the Comptroller of Public Accounts with the State Highway Commission.

#### **Art. 9.09 Distributors' Records**

(1) Every distributor shall keep in Texas for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General or their authorized representatives, a complete and well-bound book record of all crude oil and other oil or products from which such distributor may refine or blend any motor fuel or other derivatives of crude petroleum that is sold or used by him, and his record shall show the date of receipt, the name and address of the person from whom purchased, the means of delivery and the quantity in barrels, of all such crude oil and other oil or products; also it shall show all sales of the same as and when made from stocks on hand, the quantity refined or blended, and inventories on the first of each month. Provided further, a complete record in barrels or gallons shall be kept of all liquid by-products derived or obtained from any refining, absorption, or recycling operation. Said record shall also show separately the number of barrels or gallons of such products on hand at the first of each month and the number of barrels or gallons sold, used, or otherwise disposed of.

Every distributor shall also keep in Texas for a period of two (2) years, open to said inspection, a complete and well-bound book record of all motor fuel, casinghead gasoline, natural or drip gasoline and other derivatives or condensate of crude petroleum or natural gas, or their products, purchased or received by said distributor. Such records shall show the date received, from whom purchased or received, the quantity received, the commodity or kind of product received, and such other information as will provide a complete record of the disposition of said products. Said distributor shall also keep for a period of two (2) years a complete record of inventories on the first of each month of all motor fuel, casinghead gasoline, natural gasoline or drip gasoline, or other derivatives or condensates of crude petroleum, or natural gas, or their products.

(2) Every distributor shall keep also in Texas for a period of two (2) years, open to said inspection a complete record of each and every sale, distribution or use of motor fuel, crude oil, kerosene, naphtha, distillate, casinghead gasoline, drip gasoline, absorption and natural gasoline, and



other derivatives or condensates of crude oil or natural gas, including fuel oil and other liquid residues, regardless of whether or not a tax is due upon said products under the provisions of this Chapter; and providing that the record of each such sale, distribution, or use of such commodities shall include the date of any such transactions, the name and address of each purchaser or user, and the amount of any such commodity so sold or used. And it is especially provided that any such sale, distribution, or use of any of the foregoing commodities shall be recorded upon a form of manifest to be prescribed or approved by the Comptroller and furnished by the distributor. Said manifest shall be issued in not less than duplicate counterparts and numbered consecutively. Said manifest shall be printed and the counterparts shall be printed on paper of different color, and shall have printed thereon the name of the distributor, his address, the serial number of said manifest, and spaces shall be provided thereon wherein shall be shown the date of such sale, distribution or use, the purchaser or other recipient and his address, the quantity sold, the means of delivery, including the license number of and description if delivered into or by a motor vehicle or trailer, the number and initial if delivered by tank car, the name or description if delivered by boat or barge, and the opening and closing record of meter readings or tank gauges if delivered by pipeline, and the time of delivery into the tank wagon, trailer or other conveyance; provided, however, that rail shipments of motor fuel and other derivatives or condensates of crude products or natural gas shall be supported by regular bills of lading. Provided further, that the manifest shall reflect separately the tax involved in the sale of motor fuel apart from the cost thereof, less the tax. The manifest shall be properly made out and signed by both the distributor and the purchaser or recipient of said commodity. Every person receiving from a distributor any motor fuel and reselling or redelivering the same, shall likewise record each sale or delivery upon similar manifest. Provided, however, that manifests shall not be required upon retail sales in quantities of thirty (30) gallons or less.

(3) It is the intent and object of this Article to require that every person, except as herein expressly provided to the contrary, who shall transport any commodity required to be recorded upon a manifest shall carry with said commodity at all times a manifest covering said cargo, and said person shall issue a manifest to the purchaser or receiver of all or any part of the commodity so being transported, and to require that such purchaser or receiver shall receipt on said manifest for the quantity so delivered and received, and that one counterpart of the manifest shall be delivered to the purchaser, to be retained by him for the time and in the manner required herein, for inspection by the Comptroller and Attorney General, and that another counterpart shall be retained by the distributor or other seller for like purposes and periods. If no sale is involved in such transaction a notation showing such fact or information shall be recorded on said manifest. Provided further, that carriers-for-hire operating under valid permits or certificates of convenience and necessity issued by the Railroad Commission of the State of Texas, and not engaged in transporting motor fuel for sale or distribution for sale, and persons operating motor buses under franchises or licenses issued by municipalities shall not be required to carry or issue a manifest for motor fuel in quantities of one hundred (100) gallons or less, when said motor fuel is contained and transported in the fuel tank connected to and feeding the carburetor of any motor vehicle owned or operated by said carrier or person, and is used exclusively for the propulsion of such motor vehicle and is not transported for sale, distribution or delivery to

any other person. This exemption shall not apply to the fuel tank of any motor vehicle used to transport motor fuel in any quantity for sale or distribution for sale.

Provided, however, that where a distributor markets his products through his own service stations, that as to said service stations, it will be sufficient to keep the records at said service stations, hereinafter required by this Chapter to be kept by dealers.

#### **Art. 9.10 Dealers' Records**

Every dealer shall keep, at each place of business in Texas, for a period of two (2) years, for the inspection at all times of the Comptroller and the Attorney General, or their authorized representatives, the manifest furnished by the seller, as required herein, and in addition thereto a well-bound book record which will provide complete information of all motor fuels, naphtha, kerosene, distillate, gas oil, fuel oil and/or casing-head gasoline, natural gasoline, drip gasoline or absorption gasoline, and all other derivatives or condensates of crude oil or natural gas, purchased or received by him at each place of business, and inventories on the first of each month of all such products. Such record shall show the date received, the name and address of the person from whom purchased or received, the number of gallons, the designation by name of the particular kind of motor fuel or other products purchased or received, the point from which shipped or delivered, the point at which received, the number and initials of car if shipped by rail, the name of the boat or barge, if shipped by water, and the license number and description, if received by motor vehicle or trailer, and in addition, the total daily sales, designating the particular kind of motor fuel, kerosene, naphtha, distillate, gas oil, fuel oil, casinghead gasoline and/or natural gasoline, drip gasoline, absorption gasoline, or other derivatives or condensates of crude oil or natural gas, sold or delivered, whether the same be taxable or not under the provisions of this Chapter. Upon each sale or delivery of any of the commodities named herein at wholesale for the purpose of resale, and upon each retail sale, distribution or use of said commodities in quantities of more than thirty (30) gallons, every dealer shall be required to issue and keep for a period of two (2) years, a manifest made up as required by Art. 9.09 of this Chapter, giving full details of such sales, deliveries, distributions, or use, as said form manifest provides shall be given. The duplicate of said manifest shall be delivered to the purchaser or carrier and the original kept by said dealer.

#### **Art. 9.11 Carrier Records**

(1) All common and contract carriers in this State shall keep for a period of two (2) years, open to inspection by the Comptroller or his authorized representatives, a complete record of each transportation of motor fuel, showing the date of transportation, the consignor and consignee, the means of transportation and the quantity and kind of motor fuel transported. Said record shall show such intrastate records separately from interstate records.

(2) All persons operating trucks, pipelines, and other conveyances as common or contract carriers in the transportation of motor fuel into and from this State, exclusive of railroads, shall render a sworn report to the Comptroller not later than the 20th of each month, on a form prescribed by said Comptroller, showing a description of the truck or other conveyances in which the same was transported, the date said motor fuel was transported, the consignor and consignee, and the quantity and kind of

said motor fuel which was transported by such persons during the preceding month. There shall also be included in said report full data concerning the diversion of shipments en route as amount to a change from interstate to intrastate and intrastate to interstate commerce. Such report shall show the points of origin and destination, the number of gallons shipped or transported, the date, the consignee and the consignor, and the kind of motor fuel. All persons operating railroads as common carriers in the transportation of motor fuel into and from this State shall, as and when requested by the Comptroller, and in such form as may be prescribed, render, not later than the 20th of the following month, a sworn report for the preceding month, or for such other period or periods as may be requested, showing a description of the tank car or other conveyance in which the same was transported, and shall render such other information concerning the diversion of or change of shipments en route from interstate to intrastate commerce or intrastate to interstate commerce, as may be required by the Comptroller.

#### Art. 9.12 Liquid Residues

Every person operating a pipeline for the purpose of conveying or moving natural gas through such pipeline shall either collect and conserve for the purpose of sale, distribution, or use the liquid residuum commonly known as "drip gasoline" which is formed and extracted from such pipelines, or if said product has no practical value to said person, he shall neutralize, burn, or otherwise destroy said product in a manner that will prevent its use as motor fuel in this State. If such drip gasoline is sold, distributed, or used as motor fuel, said person shall obtain the permit, make the reports, and keep the records of such sales, distributions, or use in compliance with the provisions of this Chapter.

#### Art. 9.13 Claims for Refunds

(1) In all refund claims filed under this Article, the burden shall be on the claimant to furnish sufficient and satisfactory proof to the Comptroller of the claimant's compliance with all provisions of this Article; otherwise, the refund claim shall be denied.

(2) Any person (except as hereinafter provided), who shall use motor fuel for the purpose of operating or propelling any stationary gasoline engine, motorboat, aircraft, or tractor used for agricultural purposes, or for any other purpose except in a motor vehicle operated or intended to be operated upon the public highways of this State, and who shall have paid the tax imposed upon said motor fuel by this Chapter, either directly or indirectly, shall, when such person has fully complied with all provisions of this Article and the rules and regulations promulgated by the Comptroller, be entitled to reimbursement of the tax paid by him less one and one half per cent ( $1\frac{1}{2}\%$ ) allowed distributors, wholesalers and jobbers, and retailers under the provisions of this Chapter. Provided, however, no tax refund shall be paid to any person on motor fuel used in any construction or maintenance work which is paid for from any State funds to which motor fuel tax collections are allocated or which is paid jointly from any such State funds and Federal funds, except that when such fuel is used in maintenance of way machines, or other equipment of a railroad, operated upon stationary rails or tracks, then such railroad shall be entitled to a tax refund on such fuel.

(3) Any person desiring to sell to others, or to appropriate for his own use, refund motor fuel as defined herein, shall make separate application to the Comptroller for each separate place of business from which refund motor fuel will be sold, or appropriated for use, for a refund

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dealer's license to sell or appropriate such product and it shall be unlawful to issue an invoice of exemption covering the sale or appropriation of refund motor fuel without possessing a valid refund dealer's license. The Comptroller shall make such examination of each application for license and the applicant therefor as he deems necessary and if in his opinion the applicant is qualified to perform the duties required of a refund dealer, and is otherwise entitled to the license applied for, a nontransferable license shall be issued by the Comptroller for the place of business named in the application. Each license so issued shall be continuous in force and effect until such time as the Comptroller shall require a renewal thereof, or until such license shall be terminated by the licensee or revoked or suspended by the Comptroller as provided by law.

No refund of the tax paid on any motor fuel shall be granted unless such motor fuel has been purchased from, or appropriated and used by, a refund dealer holding a valid license at the time of such purchase or use, except upon motor fuel exported, lost by accident, or purchased by the United States Government for its exclusive use.

Every refund dealer shall be required to maintain the records required of a dealer in this Chapter, and in addition each such refund dealer shall keep for a period of two (2) years for the inspection of the Comptroller and the Attorney General or their authorized representatives, the original copy of each invoice of exemption issued by such dealer. The license number of the refund dealer shall be inserted in the space provided on each invoice of exemption issued by him.

The Comptroller shall have the authority and it shall be his duty to revoke or suspend the license or licenses of any refund dealer who violates or fails or refuses to comply with any provision of this Chapter or any rule and regulation duly promulgated by the Comptroller. In the event the Comptroller revokes or suspends a license, the said license and all unissued invoices of exemption assigned to the dealer for said license shall be surrendered by the licensee to the Comptroller forthwith.

(4) When motor fuel is ordered or purchased for refund purposes the purchaser or recipient thereof shall state the purpose for which such motor fuel will be used or is intended to be used, and shall request an invoice of exemption which shall be made out by the selling refund dealer at the time of such delivery, or, if the motor fuel is appropriated for use by a refund dealer it shall be made out at the time the motor fuel is appropriated or set aside for refund purposes. The invoice of exemption shall state: the refund dealer's license number; the date of purchase and the date of delivery; the names and addresses of the purchaser and the selling dealer; the purpose for which such motor fuel will be used or is intended to be used; the number of gallons delivered, or appropriated for use; and any other information the Comptroller may prescribe. No refund shall be allowed unless an invoice of exemption is made out at the time of delivery, except as hereinafter provided. If it be shown by evidence sufficient and satisfactory to the Comptroller that an invoice of exemption had been duly requested by a purchaser of refund motor fuel or his agent at the time of the purchase or delivery and that its failure to be issued was through no fault of the claimant, then the Comptroller may, if he finds the motor fuel has been used for refund purposes, issue warrant in payment of the claim.

The invoice of exemption shall be made out and executed in duplicate by the refund dealer, the duplicate of which shall be delivered to the purchaser of the motor fuel and the original shall be retained by the refund dealer at the place of business designated on his license for the time and in the manner herein provided. Each invoice of exemption shall be

signed by the refund dealer and the person who purchases the motor fuel for refund purposes or a duly authorized employee or agent of said dealer or purchaser. But if neither the purchaser of the motor fuel nor an agent is present to sign the invoice of exemption at the time of delivery, the refund dealer shall mail or deliver the duplicate invoice of exemption to the purchaser within seven (7) days after delivery of the motor fuel.

(5) It shall be unlawful for any refund dealer, or any employee thereof, to prepare or notarize any claim for refund of tax paid on motor fuel purchased from said refund dealer, or to act in any capacity as agent or employee of any claimant for refund of tax paid on motor fuel purchased from said refund dealer by keeping his books, records, refund claim forms or other documents to be used or intended for use by said claimant in the preparation of his tax refund claim, and the Comptroller shall not approve the payment of any tax refund claim, in whole or in part, in which the claimant has permitted the seller of the motor fuel upon which tax refund is claimed, or any employee of said seller, to prepare, notarize or file his claim for tax refund, or to keep any books, records or documents used in the preparation or filing of said claim. Provided that the Comptroller may, after proper hearing as herein provided, cancel, suspend, or refuse the issuance or reinstatement of the license of any refund dealer who shall prepare or notarize, or who shall permit any employee to prepare or notarize, any claim for refund of tax paid on motor fuel purchased from said refund dealer by the claimant thereof, or who shall keep, or permit any employee to keep, any duplicate invoice of exemption for more than seven (7) days after it has been duly issued to a purchaser of refund motor fuel.

(6) Any person entitled to file claim for tax refund under the terms of this Chapter shall file such claim with the Comptroller on a form prescribed by the Comptroller within six (6) months from the date the motor fuel was delivered to him, or from the date the motor fuel was lost, exported or sold to the United States Government, and no refund of tax shall ever be made where it appears from the invoice of exemption, or from the affidavits or other evidence submitted, that the sale or delivery of the motor fuel was made more than six (6) months prior to the date the refund claim was actually received in the Comptroller's office. The refund claim, with all duplicate invoices of exemption required by law to be issued with the sale of refund motor fuel included as a part of said claim, shall be verified by affidavit of the claimant, or a duly authorized agent of the claimant, and shall show the quantity of refund motor fuel acquired and on hand at the beginning and closing dates of the period covered in the refund claim filed.

If any claimant was not present when the refund motor fuel was used for any purpose, except in machines operated upon stationary rails or tracks, the Comptroller may require such additional affidavits as he may deem necessary to prove the correctness of the claim, from persons who were present and used or supervised the using of the refund motor fuel. The claim for tax refund shall include a statement that the information shown in each duplicate invoice of exemption attached to the tax refund claim is true and correct, and that deductions have been made from the tax refund claim for all motor fuel used on the public highways of Texas and for all motor fuel used or otherwise disposed of in any manner in which a tax refund is not authorized herein. If upon examination, and such other investigation as may be deemed necessary, the Comptroller finds that the claim filed for tax refund is just, and that the taxes claimed have actually been paid by the claimant, then he shall issue warrant due the claimant but no greater amount shall be refunded than has been paid

into the State Treasury on any motor fuel, and no warrant shall be paid by the State Treasurer unless presented for payment within two (2) years from the close of the fiscal year in which such warrant was issued, but claim for the payment of such warrant may be presented to the Legislature for appropriation to be made from which said warrant may be paid.

If the refund motor fuel for which tax refund is claimed was used on a farm or ranch or for any agricultural purpose the claim shall show the make, model, and year of manufacture of each tractor, combine and other vehicle in which any refund motor fuel included in the claim was used and the actual work performed showing the different kinds of crops planted and the acreage used or set aside for each crop, during the period of the refund claim, and showing complete information of all other work performed by each such tractor, combine or other vehicle used by the claimant during the period of the claim. The claim shall likewise show the make, kind and horsepower of each stationary engine or motor in which refund motor fuel was used by the claimant and the purposes for which it was used, and if any of the motor fuel included in the claim was used other than in the operation of motors or engines, the claim shall show complete information as to the manner of use and the purpose for which the motor fuel was used. The claim shall also state the number of automobiles, trucks, pickups, and other licensed vehicles operated regularly by the claimant or his employees, on or in connection with the farm, ranch or other agricultural project, and shall show the name and address of the dealer or dealers from whom taxable motor fuel was purchased for use in such licensed vehicles during the period of the claim.

If the refund motor fuel was used in mining, quarrying, drilling, producing, exploring for minerals, or in construction, maintenance, repair work or in other functions similar to the above uses, a distribution schedule, or such other information as the Comptroller may require, shall be attached to and filed as a part of the refund claim which shall show the quantities of motor fuel delivered to and consumed in each vehicle or other unit of equipment used in such work during the period of the claim; provided, however, that no schedules shall be required to show the quantities of motor fuel used in machines operated upon stationary rails or tracks.

If the refund motor fuel was used in aircraft or motorboats, the claim shall show the make and description of such aircraft or motorboat and the quantities of motor fuel used during the period of the refund claim.

If the refund motor fuel was used for cleaning, or dyeing or for industrial or domestic purposes, or was converted into a product other than motor fuel by any manufacturing or blending process, the claim shall show the purpose or purposes for which the motor fuel was used and the quantity used for each separate purpose.

It shall be the duty of every person claiming tax refund to verify the contents of the claim filed and any such person who shall file claim for tax refund on any motor fuel which has been used to propel a motor vehicle, tractor or other conveyance upon the public highways of Texas for any purpose for which a tax refund is not authorized herein, or who shall file any duplicate invoice of exemption in a claim for tax refund on which any date, figure or other material information has been falsified or altered after said duplicate invoice of exemption has been duly issued by the refund dealer and delivered to the claimant, shall forfeit his right to the entire amount of the refund claim filed.

(7) No tax refund shall be paid on motor fuel used in automobiles, trucks, pickups, jeeps, station wagons, buses, or similar motor vehicles designed primarily for highway travel, which travel both on and off the highway except as hereinafter provided. (a) If any such motor vehicles are used entirely for non-highway purposes except when propelled over the public highway to obtain repairs, oil changes, or similar mechanical or maintenance services, or when propelled over the public highway for other incidental purposes, or (b) if any such motor vehicles are operated exclusively during the period covered in any refund claim over prescribed courses lying between fixed terminals or bases, in which such vehicles travel the same mileage on the highway on each trip and the same mileage off the highway on each such trip, then in such cases a tax refund claim may be approved for the motor fuel used off the public highway in such vehicles, only when the claimant has kept a complete record of each trip traveled over any part of the public highway showing the date, the highway mileage traveled and the quantity of motor fuel used in each of said vehicles during the period of such travel.

Any claimant who owns or operates more than one farm, ranch, or similar tract of land in the same vicinity, may move his farm tractors over the public highway for the purpose of transferring the base of operation of such tractors from one such farm, ranch, or other similar tract of land, to another, without measuring and deducting the refund motor fuel used in such incidental highway travel from his claim for tax refund. Motor fuel consumed in any tractor traveling more than ten (10) miles on the public highway during any one trip, shall not be construed to have been used for incidental purposes and shall not be subject to tax refund thereon, and motor fuel consumed in any tractor used in transporting produce, goods, wares, or other commodities or merchandise over the public highway, or consumed in any tractor used in custom work for others, or consumed in any tractor used upon the public highway for any purpose other than in moving said tractor from its base of operation on one farm, ranch, or other similar tract of land, to another within the limitations described hereinabove, shall be deducted, in the full amount so used, from any claim for tax refund filed by the user of said motor fuel.

A claimant may account for any part of refund motor fuel used upon the public highway, and not eligible for tax refund, by one of the following methods: (a) In motor vehicles which operate exclusively off the public highway except for incidental highway travel as described above, a claimant may drain all refund motor fuel from the fuel tank of any such motor vehicle, tractor or other conveyance before it moves upon the public highway, and then refill it with accurately measured motor fuel, which shall be deducted from the refund motor fuel set up in the claim if said fuel tank is refilled with refund motor fuel, or (b) claimant may, by accurately measuring the mileage any such vehicle, tractor or other conveyance travels upon the public highway, deduct from the refund motor fuel set up in the claim, an amount equal to one-fourth ( $\frac{1}{4}$ ) of a gallon for each mile or fraction of a mile any such motor vehicle, tractor or other conveyance travels on the public highway during the period of the claim, or (c) the Comptroller may prescribe regulations to permit any claimant who operates motor vehicles or other conveyance exclusively over prescribed courses lying between fixed terminals or bases in which the vehicles travel the same mileage on the public highways on each trip and the same mileage off the highway on such trip, to keep a record of the total miles traveled and the total quantity of accurately measured motor fuel consumed by each such vehicle during the period of the claim,

from which the claimant may, for tax refund purposes, be permitted to calculate and determine the quantities used off the highway upon a basis of the average miles per gallon traveled by each such vehicle, or (d) if claimant uses any part of refund motor fuel purchased on invoice of exemption in motor vehicles which operate regularly on the public highway in which no part of the motor fuel used is eligible for tax refund, he shall keep a complete record showing the date of each separate use or withdrawal for use, the make and description of the vehicle in which used, and the quantity so used, as measured through any type measuring device or standard measuring container acceptable to the Comptroller, and the quantity so used shall be deducted from the refund motor fuel set up in the claim filed by said claimant, or the Comptroller may in his discretion permit any claimant who has kept proper record to deduct from the refund motor fuel set up in his claim, a quantity equal to the true capacity of the fuel tank of the vehicle using any part of such refund motor fuel on the highway, each time such fuel tank is filled or serviced with refund motor fuel.

The records prescribed hereinabove shall be kept for a period of six (6) months from the date any claim, to which such records are pertinent, is filed in the Comptroller's office, and no tax refund shall ever be paid in whole or in part when a part of the motor fuel purchased on any invoice or exemption contained in the claim has been used to operate a motor vehicle, tractor or other conveyance of any kind or description upon any public highway for which a tax refund is not authorized herein, unless the claimant has kept for the time and in the manner herein provided a complete record of all such uses for which no tax refund is authorized.

(8) Any person who shall export, or lose by fire or other accident motor fuel in any quantity of one hundred (100) gallons or more upon which the tax imposed herein has been paid, or who shall sell motor fuel upon which the tax has been paid in any quantity to the United States Government, for the exclusive use of said Government, may file claim for refund of the net tax paid to the State in the manner herein provided, or as the Comptroller may direct. Provided, that any bonded distributor holding a valid distributor's permit who establishes proof sufficient and satisfactory to the Comptroller of such export, loss by accident, or sale to the United States Government, may take credit for the net amount of the tax paid to the State on any subsequent monthly report and tax payment made to the Comptroller within six (6) months from the date of such exportation, loss or sale.

(9) The right to receive a tax refund under the provisions of this Chapter shall not be assignable except as hereinafter provided. Any person residing or maintaining a place of business outside of the State of Texas who shall purchase motor fuel in any quantity of not less than one hundred (100) gallons and shall export the entire quantity so purchased out of Texas forthwith, may assign his right to claim tax refund to the licensed distributor from whom such motor fuel was purchased, or to any licensed distributor who has paid the tax on such motor fuel either directly or through another licensed and bonded distributor in Texas. When such distributor has secured the proof of export required by the Comptroller, he may file claim for refund of the tax paid on the motor fuel so exported, or, such distributor may take credit for an amount equal to said tax refund on any monthly report and tax payment filed with the Comptroller within six (6) months from the date the motor fuel was exported.

(10) For the purpose of enabling the Comptroller, and his authorized representatives, to ascertain whether or not refund motor fuel has been



or is being used for the purposes for which it was purchased, they shall have the right to inspect the premises and the storage thereon where any motor fuel purchased on an invoice of exemption is stored or used and to examine any books and records kept by such purchaser, pertaining to such motor fuel, and it shall be a violation of the law for any person who has purchased or received motor fuel upon which an invoice of exemption has been issued to refuse permission to make such inspection or examination. It is further provided that the refusal of any such person to permit the inspection and examination described hereinabove shall constitute a waiver of all right to receive a tax refund on any claim under investigation.

(11) Any person who violates or fails to comply with any provision of this Article, or any rule and regulation duly promulgated by the Comptroller for the enforcement of the provisions of this Article, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200). Provided, however, that the penalties prescribed above shall not apply to offenses punishable under Art. 9.27 of this Chapter, but the said Art. 9.27 shall apply and control over such offenses. In addition to all other penalties prescribed in this Article, it is herein provided that a conviction for a violation of any provision of this Article shall, for the first offense, forfeit the right of said person to receive a tax refund for a period of six (6) months from the date of said conviction, and for each subsequent offense, shall forfeit the right of said person to receive a tax refund for a period of one (1) year from the date of said conviction.

(12) Concurrently with the issuance of a refund dealer's license the Comptroller shall issue and charge to the account of the licensee, a book or books of invoices of exemption which invoices shall be printed in duplicate sets and serially numbered. The Comptroller shall keep a record of the number of the books and their serial numbers issued to each refund dealer who shall be liable for a penalty in the amount of Five Dollars (\$5) for each book of invoices of exemption received by him for which he cannot properly account as hereinafter provided. Whenever a representative of the Comptroller audits the motor fuel records of a refund dealer, or whenever a refund dealer places a recorder for a book or books of invoices of exemption, such dealer shall prepare a written record showing the serial numbers of all books not previously accounted for and if such record does not account for each book previously issued to said refund dealer which has not been previously accounted for, the refund dealer shall be given thirty (30) days notice in writing to produce any missing book or to show that it has been used to cover sales of refund motor fuel made by said refund dealer. If the missing book or books are not accounted for within thirty (30) days from the date of said notice the refund dealer shall forfeit to the State of Texas as a penalty the sum of Five Dollars (\$5) for each book unaccounted for, which shall be paid to the Comptroller and allocated to the same funds to which the motor fuel taxes collected hereunder are apportioned. No further books of invoices of exemption shall be issued to any refund dealer who has incurred the penalty described hereinabove until said penalty has been paid. Any invoices of exemption which become mutilated or unusable shall be returned to the Comptroller by the refund dealer for credit to his account. The books of invoices of exemption shall not be transferable or assignable by such refund dealer unless such transfer or assignment is authorized by the Comptroller.

If any duplicate invoice of exemption issued to a purchaser is lost or destroyed said purchaser may make application to the Comptroller for forms to be issued and used in lieu of each lost duplicate.

The invoices of exemption bound in book form shall be furnished by the State of Texas, free of cost, to the refund dealer.

(13) All the moneys paid into the Treasury under the provisions of this Chapter, except the filing fees provided herein, shall be set aside in a special fund to be known as the Highway Motor Fuel Tax Fund and no part of said fund shall be credited to the Available School Fund until a report is made by the Comptroller to the Treasurer, showing the total maximum amount of refunds that may be required to be paid by the State out of said funds. The Comptroller shall on the 25th day of each month, or as soon thereafter as is possible, compute and ascertain the maximum amount of funds that may be due by the State on sale of motor fuel during the preceding month, upon which a refund may be due, and shall certify to the Treasurer the maximum amount, and the Treasurer shall reserve said amount each month out of which to pay refunds, and shall not distribute that part of said fund until the expiration of the time in which a refund can be made out of said fund, but as soon as said report has been made by the Comptroller and the maximum amount of refunds determined, he shall deduct said maximum amount from the total taxes paid for such month, and apply the remainder of such as provided by law. If the claimant has lost or loses, or for any reason failed or fails to receive warrant after warrant was or has been issued by the Comptroller, and upon satisfactory proof of such, the Comptroller may issue claimant duplicate warrant as provided for in Article 4365, Revised Civil Statutes of Texas of 1925.

(14) So much of said fund is hereby appropriated and set aside as may be necessary to pay the refunds provided for herein, and if a specific amount be necessary then there is hereby appropriated and set aside for said purpose the sum of Two Hundred Thousand Dollars (\$200,000), or so much thereof as may be necessary. In no event shall any refund be made to any person in excess of the actual amount paid by such person, and the one and one half per cent (1½%) deducted originally by the distributor upon the first sale or distribution of the motor fuel shall be deducted in computing the refund. The Comptroller shall deduct fifty cents (50¢) from all such refunds as a filing fee, which fee shall be deducted from the warrant issued in payment of such refund, which said filing fee shall be set aside for the use and benefit of the Comptroller in the administration and enforcement of this Article, as well as for the payment of expenses in furnishing the form of invoice of exemption and other forms provided for herein, and the same is hereby appropriated for such purpose. All such filing fees shall be paid into the State Treasury and shall be paid out on vouchers and warrants in such manner as may be prescribed by law.

#### **Art. 9.14. Transit Companies**

Provided that in lieu of the tax levied by Article 9.02 of this Chapter, there shall be and is hereby levied and imposed an excise tax of Four Cents (4¢) per gallon or fractional part thereof upon the first sale, distribution or use of motor fuel in this State which said tax shall be applicable only when such motor fuel is used or consumed, or is to be used or consumed for the propulsion of transit vehicles owned by a transit company (a) the greater portion of whose business is the transportation of persons within the limits of an incorporated city or town in conveyances designed to transport twelve (12) or more passengers; (b) which holds a franchise from such city or town; (c) whose rates are regulated by such city or town; and (d) which pays to such city or town a tax on

its gross receipts. Said taxes shall be collected and paid in the same manner as the taxes levied by Article 9.02 of this Chapter.

Where the first sale, distribution or use of motor fuel in this State is to or by a transit company, and such company shall furnish to the distributor or seller, or to the Comptroller, as the case may be, an affidavit to the effect that it possesses the aforementioned four (4) characteristics and that it will use such motor fuel only in the operation of its transit vehicles, the distributor or seller, or the Comptroller, as the case may be, shall collect from such transit company only the taxes levied herein.

Where the distributor or seller has collected the tax levied by Article 9.02 of this Chapter on motor fuel thereafter used by a transit company, such transit company may obtain a refund in the amount of one cent (1¢) per gallon or fractional part thereof by conforming to the refund procedure set forth in Article 9.13 of this Chapter, and by furnishing to the Comptroller an affidavit to the effect that it possesses the aforementioned four (4) characteristics and that it has used such motor fuel only in the operation of its transit vehicles.

#### **Art. 9.15 Inspection**

For the purpose of enabling the Comptroller, or his authorized representatives, to determine the amount of tax collected and payable to the State and the amount of said tax accruing and due for motor fuel used by a distributor, refinery, dealer, user, or other person, dealing in or possessing motor fuel, crude oil, or other derivatives or condensates of crude petroleum or natural gas, or their products or to determine whether a tax liability has been incurred, they shall have the right to inspect any premises where motor fuel, crude petroleum, natural gas, or any other derivatives or condensates of crude petroleum, natural gas, or their products are produced, made, prepared, stored, transported, sold or offered for sale or exchange, examine all of the books and records required herein to be kept, and any and all books and records that may be kept incident to the conduct of the business of said distributor, refinery, or other person, dealing in or possessing motor fuel, crude oil, or other derivatives or condensates of crude petroleum, natural gas or their products. The said authorized officers shall also have the right, as an incident to determining said tax liability or whether a tax liability has been incurred, to examine and gauge or measure the contents of all storage tanks, containers, and other property or equipment, and to take samples of any and all products stored therein. For the foregoing purposes, said authorized officers shall also have the right to remain upon said premises for such length of time as will be necessary to fully determine said tax liability, or whether a tax liability has been incurred.

#### **Art. 9.16 Permits; Cancellation, Renewal**

The Comptroller, or any duly authorized representative of said Comptroller, is hereby authorized to cancel, or to refuse the issuance, extension, or reinstatement of any motor fuel distributor's permit, any user's permit, or any refund dealer's license, as provided under the terms of this Chapter, to any person who has violated or has failed to comply with any duly promulgated rule and regulation of the Comptroller, or any of the provisions of this Chapter, including any of the following offenses, which may be applicable to such permittee or licensee: (a) failure or refusal to remit or pay to the State of Texas any tax levied herein, which said tax is shown to have accrued and to be owing to said State by a duly verified audit made by an authorized representative of the Comptroller, from any

report filed with said Comptroller or from any books or records required to be kept or any books or records authorized to be audited by the provisions of this Chapter; (b) failure to file any return or report required under the provisions of this Chapter; (c) the making and filing with the Comptroller any false or incomplete return or report required under the provisions of this Chapter; (d) failure to keep any books and records for the period and in the manner required herein to be kept; (e) the falsifying, destroying, mutilating, removing from the State, or secreting any such books and records; (f) refusal to permit the Comptroller, Attorney General, or their authorized representatives, to inspect, audit, and examine any books and records required herein to be kept, or any pertinent records that may be kept, or to inspect any premises said persons are authorized herein to inspect; (g) refusal to permit the Comptroller, Attorney General, or their authorized representatives, to inspect, examine, measure, gauge, and take samples from any truck, tank, pump, or container said persons are authorized to inspect, examine, measure, gauge, and take samples from, under the provisions of this Chapter; (h) the forging or falsifying of any invoice of exemption herein provided, or the making of any false statement in any claim for refund filed with the Comptroller under the provisions of this Chapter; (i) the engaging in any business requiring a permit or license under the provisions of this Chapter, without obtaining and possessing a valid permit or license.

Before any permit or license may be cancelled or the issuance, reinstatement, or extension thereof refused, the Comptroller shall give the owner of such permit or license, or applicant therefor, not less than five (5) days notice of a hearing at the office of the Comptroller, in Austin, Travis County, Texas, or at any district office maintained by the Comptroller, granting said owner or applicant an opportunity to show cause before said Comptroller, or his duly authorized representative, why such action should not be taken. Said notice shall be in writing and may be mailed by United States registered mail or certified mail to said owner or applicant, at his last known address, or may be delivered by a representative of the Comptroller, to said owner or applicant, and no other notice shall be necessary. The Comptroller may prescribe his own rules of procedure and evidence for such hearings.

If, after said hearing or opportunity to be heard, the permit or license is cancelled by the Comptroller, or his duly authorized representative, all taxes which have been collected or which have accrued, although said taxes are not then due and payable to the State, except by the provisions of this Article, shall become due and payable concurrently with the cancellation of such permit or license, and the permittee or licensee shall forthwith make a report covering the period of time not covered by preceding reports filed by said permittee or licensee, and ending with the date of cancellation and shall remit and pay to the State of Texas all taxes, which have been collected and which have accrued from the sale, use, or distribution of motor fuel in this State.

After being given notice of any such order of cancellation, it shall be unlawful for any person to continue to operate his business under any such cancelled permit or license.

An appeal from any order of the Comptroller, or his duly authorized representative, cancelling or refusing the issuance, extension, or reinstatement of any permit or license may be taken to the District Court of Travis County, Texas, by the aggrieved permittee, licensee, or applicant. The trial shall be de novo under the same rules as ordinary civil suits with the following exceptions, which shall be considered literally, viz: (1) all appeals shall be perfected and filed within thirty (30) days after

the effective date of the order, decision, or ruling of the Comptroller or his duly authorized representative; (2) such proceedings shall have precedence over all other causes of a different nature; (3) trial of all such cases shall commence within ten (10) days from the filing thereof; (4) the order, decision, or ruling of the Comptroller, or his duly authorized representative, may be suspended or modified by the Court pending a trial on the merits.

#### **Art. 9.17 Reports As Evidence**

(1) If any distributor fails or refuses to collect and remit or to pay to the Comptroller any tax, penalties, or interest within the time and manner provided by this Chapter, and it becomes necessary to bring suit or to intervene in any manner for the establishment or collection of said claim, in any judicial proceedings, any report filed in the office of the Comptroller by such distributor or his representative, or a certified copy thereof certified to by the Comptroller or his Chief Clerk, showing the amount of motor fuel sold by such distributor or his representative, on which such tax, penalties, or interest have not been remitted or paid to the State, or any audit made by the Comptroller or his representatives, from any books or other records required to be kept or that may be kept by said distributor, when signed and sworn to by such representatives as being made from said books and records of said distributor or from any books or records of any person from whom such distributor has bought, received, delivered, or sold motor fuel, crude oil, or the derivatives of crude oil, or natural gas, or from the books and records of any transportation agency, who has transported any of said products, such report or audit shall be admissible in evidence in such proceedings, and shall be prima facie evidence of the contents thereof; provided, however, that the prima facie presumption of the correctness of said report or audit may be overcome, upon the trial, by evidence adduced by said distributor.

(2) A certificate under the seal of the Comptroller executed by said Comptroller or his Chief Clerk, setting forth the terms of any order, rule, regulation, bond, or other instrument, referred to in this Chapter, and that the same had been adopted, promulgated and published or executed and filed with the Comptroller, and was in force and effect at any date or during any period specified in such certificate, shall be prima facie evidence of all such facts, and such certificate shall be admitted in evidence in any action, civil or criminal, involving such order, rule, and regulation, and the publication thereof, without further proof of such promulgation, adoption, or publication, and without further proof of its contents, and the same provisions shall apply to any bond or other instrument referred to herein.

#### **Art. 9.18 Civil Penalties**

If any person affected by this Chapter (a) shall fail to pay to the State of Texas any tax due and owing under the provisions of this Chapter, or (b) shall fail to keep for the period of time provided herein any books or records required, or (c) shall make false entry or fail to make entry in the books and records required to be kept, or (d) shall mutilate, destroy, secrete, or remove from this State, any such books or records, or (e) shall refuse to permit the Comptroller, the Attorney General, or their authorized representatives to inspect and examine any books or records, required to be kept, or any other pertinent books or records, incident to the conduct of his business that may be kept, or (f) shall make, deliver to, and file with the Comptroller a false or incomplete return or report, or (g) shall refuse to permit the Comptroller, or his authorized representatives,

to inspect any premises where motor fuel, crude oil, natural gas, or any derivative or condensate thereof are produced, made, prepared, stored, transported, sold, or offered for sale or exchange, or (h) shall refuse permission to said persons to examine, gauge, or measure the contents of any storage tanks, vehicle tanks, pumps, or other containers, or to take samples therefrom, or (i) shall refuse permission to said persons to examine and audit any books, records, and gauge reports kept in connection with or incidental to said equipment, or (j) shall refuse to stop and permit the inspection and examination of any motor vehicle transporting motor fuel upon demand of any person authorized to inspect the same, or (k) shall fail to make and deliver to the Comptroller any return or report required herein to be made and filed, or (l) shall forge or falsify any invoice of exemption herein provided, or (m) shall make any false statement in any claim for refund of motor fuel taxes as to any material fact required to be given, or (n) if any such person shall fail or refuse to comply with any provision of this Chapter or shall violate the same, or (o) shall fail or refuse to comply with any rule and regulation promulgated hereunder by the Comptroller, or violate the same, he shall forfeit to the State of Texas as a penalty the sum of not less than Twenty-five Dollars (\$25) nor more than Five Hundred Dollars (\$500). Such penalty, if not paid, shall be recovered in a suit by the Attorney General in a Court of competent jurisdiction in Travis County, Texas, or any other court of competent jurisdiction having venue under existing venue Statutes. Provided that in addition to the penalties shown, if any distributor does not make remittance for any taxes collected, or pay any taxes due the State of Texas by said distributor within the time prescribed by law, said distributor shall forfeit two per cent (2%) of the amount due; and if said taxes are not remitted or paid within ten (10) days from the date the Comptroller gives such distributor notice of the amount due in writing directed to the address shown in the application for permit filed by said distributor, an additional eight per cent (8%) shall be forfeited. All past due taxes and penalties shall draw interest at the rate of six per cent (6%) per annum.

The venue of any suit, injunction, or other proceeding at law or in equity available for the establishment or collection of any claim for delinquent taxes, penalties, or interest accruing hereunder and the enforcement of the terms and provisions of this Article, shall be in a court of competent jurisdiction in Travis County, Texas, or in any other court having venue under existing venue Statutes.

Provided, further, that before any restraining order or injunction shall be granted against the Comptroller, or his authorized representatives, to restrain or enjoin the collection of any taxes, penalties, and interest imposed by this Chapter, the applicant therefor shall pay into the suspense account of the State Treasurer all such taxes, penalties, and interest showing to be due and owing to the State by any audit made by the Comptroller, or his duly authorized representative, when said audit has been certified to by the Comptroller or his Chief Clerk, and has been signed under oath by said authorized representative as having been made from the books and records of said applicant, whether or not required to be kept under the provision of this Article, or from the books and records of any person from whom such applicant has purchased, received, delivered, or sold motor fuel, or from the books and records of any transportation agency, which has transported such products to or from said applicant. Provided, however, that said applicant may, in lieu of paying said taxes, penalties, and interest into the suspense account of the State Treasurer, file with said Treasurer a good and sufficient surety-

bond in the amount and form and under the conditions provided in Section 1, Chapter 310, Acts of the Regular Session of the Forty-fifth Legislature, and the provisions of said Section 1, Chapter 310, are hereby made applicable to any suit filed to restrain or enjoin the collection of any such taxes, penalties, and interest imposed by this Chapter. Any proceedings to enjoin the collection of such taxes, penalties, and interest, or the enforcement of any provision of this Chapter shall be in a court of competent jurisdiction in Travis County, Texas.

#### Art. 9.19 Comptroller's Authority

(1) For the purpose of enforcing the collection of the tax levied by this Chapter, and to enable the Comptroller to ascertain whether or not the tax has been paid or accounted for on all motor fuel and other products which can be used as motor fuel, which may be transported in this State, the said Comptroller and his authorized representatives are hereby vested with the power and authority to measure, calibrate and determine the capacity in gallons of any vehicle tank or other container in which motor fuel, blending materials, liquefied gases and liquid fuels are transported. The Comptroller is hereby given the power and authority to promulgate and enforce any rules and regulations, which he may deem necessary to the best enforcement of the provisions of this Article.

All vehicle tanks, and all devices designed to be attached thereto and used in connection therewith, and all other containers in which any of the foregoing products are transported, shall be of such design and construction that they do not facilitate the perpetration of fraud. Each compartment of said vehicle tank or other container shall be conspicuously marked on, or immediately under, the dome thereof with a designating figure, or letter and the capacity of said compartment and each delivery faucet shall be marked with the capacity and a corresponding figure or letter to indicate the compartment of which it is the outlet. In addition, the total capacity of all compartments of each vehicle tank shall be conspicuously marked in letters of not less than two (2) inches in height on the rear of each such vehicle tank. The Comptroller's test or certificate number shall also be printed on the rear of each vehicle tank. When a motor vehicle carrying a vehicle tank is equipped with side tanks or other auxiliary tanks or compartments, such additional tanks and compartments shall comply with all of the specifications applicable to vehicle tanks. No vehicle shall transport motor fuel upon the public highways of this State with connection from any cargo tank or container to the carburetor for the purpose of withdrawing motor fuel from said cargo tank or container, and fuel tanks, including auxiliary fuel tanks shall be separate and apart from the cargo tank, with no connection by pipe, tube, valve or otherwise. It shall be a violation of this Article to sell or distribute motor fuel from any fuel tank or auxiliary fuel tank connected with the carburetor of any motor vehicle or to withdraw said motor fuel from any such fuel tank or auxiliary fuel tank for the purpose of sale. The measurement certificate shall be carried with the vehicle tank for which it is issued and the Comptroller or his authorized representatives shall have the authority to impound and hold any truck, for a period of not to exceed seventy-two (72) hours, until said certificate is produced. The owner of any vehicle tank or other container tested and measured may be required to pay a reasonable fee to any city or any person for the water used in the measurement of such tank or container.

If any vehicle tank or other container shall, after having been tested, become damaged, repaired or modified in any way which might affect the accuracy or measurement of its receipts and deliveries, it shall not again

be used for the sale or transportation of motor fuel, blending materials, liquefied gases and liquid fuels until officially reinspected, and, if deemed necessary, retested and remeasured.

(2) From and after the effective date of this Chapter, and before using any vehicle tank or other containers in the transportation of motor fuel, blending materials, liquefied gases and liquid fuels, except in quantities of thirty (30) gallons or less in the fuel tank feeding the carburetor of the motor vehicle, every person shall have every such vehicle tank or other containers, subject to the provision of this Article, tested, measured and calibrated by a representative of the Comptroller and shall obtain a measurement certificate from said Comptroller, showing the capacity of each such vehicle tank and other container. Provided, however, that the Comptroller may, at his discretion, accept any weights and measures certificate issued by the Division of Weights and Measures of the Department of Agriculture, State of Texas, without retesting or re-measuring said vehicle tank or containers.

It is further provided that carriers-for-hire operating under valid permits or certificates of convenience and necessity issued by the Railroad Commission of the State of Texas, and not engaged in transporting motor fuel or other taxable petroleum products for the purpose of sale or distribution for sale, and persons operating motor buses under franchises or licenses issued by municipalities, shall not be required to produce for inspection or measurement or to have tested, measured and calibrated, any fuel tank with a capacity not exceeding one hundred (100) gallons, connected to and feeding the carburetor of any motor vehicle owned or operated by said carriers or said persons, when such fuel tank is used exclusively for furnishing fuel to propel the motor or engine of said motor vehicles, and none of the contents thereof is sold or transported for sale, distribution or delivery to any other person. Provided, however, that this exemption shall not apply to the fuel tank of any motor vehicle used to transport motor fuel or other taxable petroleum products for sale or distribution for sale.

All authorized representatives of the Comptroller shall have the power and authority to inspect, test, measure, or remeasure vehicle tanks and other containers used to transport motor fuel, blending materials, liquefied gases and other liquid fuels, or containers from which said products are sold, or to correct, condemn or mark "out of order" any such vehicle tanks or containers which may be so constructed as to prevent accurate measurement or which are not constructed in conformity with the provisions of this Chapter or the rules and regulations promulgated hereunder.

(3) Whoever shall remove, obliterate, or change any measurement certificate, tag, marking or device made by any authorized representative of the Comptroller, or placed upon any vehicle tank or other container, or shall refuse or neglect to produce for inspection and measurement, at the time and place fixed by the Comptroller, not to exceed one hundred (100) miles from the point which is the customary base of operation of such truck, any vehicle tank or other container in his possession or under his control, or shall transport such products in any vehicle tank or other container which has been condemned or tagged "out of order" by any authorized representative of the Comptroller, or whoever shall fail to comply with any provision of this Article or any reasonable rule and regulation promulgated under the provisions of this Article, or shall violate the same, shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200).



**Art. 9.20 Authority to Stop and Examine**

(1) In order to enforce the provisions of this Chapter, the Comptroller, his authorized representative, or any Highway Patrolman, Sheriff, Constable, and their deputies, and all other peace officers are empowered to stop any motor vehicle which might appear to be transporting motor fuel or other derivatives of crude petroleum or natural gas, or their products, as cargo, for the purpose of examining the manifest required to be carried, for examination of the commodity in transit, to take samples of the cargo, and for such other investigations as could reasonably be made to determine whether the cargo was motor fuel or other derivatives of crude petroleum, natural gas, or their products, and whether the manifest indicates that the State tax was a part of the consideration involved in the sale or distribution of any motor fuel carried. If, upon said examination, it is found that the driver of any such motor vehicle transporting motor fuel does not possess or refuses to exhibit a manifest required herein, or if said manifest carried is false or incomplete, said authorized officers shall impound and take possession of the said motor vehicle and its contents, and unless proof is produced within seventy-two (72) hours from the beginning of such impoundment that the motor fuel has been sold with the State tax as a part of the consideration therefor, said motor vehicle and its contents shall be delivered to the Comptroller or his authorized representatives for forfeiture and sale as hereinafter provided.

(2) All motor fuel on which taxes are imposed by this Chapter, which shall be found in the possession, or custody, or within the control of any person for the purpose of being sold, transported, removed, or used by him in fraud of this Motor Fuel Tax Law, and all motor fuel which is removed or is deposited, stored, or concealed in any place with intent to avoid payments of taxes levied thereon, and any automobile, truck, tank truck, boat, conveyance, or other vehicle whatsoever used in the removal or transportation of such motor fuel for such purposes, and all equipment, paraphernalia, storage tanks, or tangible personal property incident to and used for such purpose found in the place, building, or vehicle where such motor fuel is found may be seized by the Comptroller, and the same shall be from the time of such seizure forfeited to the State of Texas, and a proceeding in the nature of a proceeding in rem shall be filed in a court of competent jurisdiction in the county of seizure to maintain such seizure and declare and perfect said forfeiture as hereinafter provided. All such motor fuel, vehicles and property seized as aforesaid, remaining in the possession or custody of the Comptroller, sheriff, or other officer for forfeiture or other disposition as provided by law, shall be deemed to be in the custody of law and irrepleviable for a period of thirty (30) days, after which time, if no suit has been filed or summary proceedings begun for forfeiture as hereinafter provided, such property shall be subject to replevy.

The Comptroller, when making the seizure aforesaid, shall immediately make a written report thereof showing the name of the agent or representative making the seizure, the place or person where and from whom such property was seized, and an inventory of same, and appraisalment thereof at the usual and ordinary retail price of the article seized, which report shall be prepared in duplicate, signed by the agent or representative so seizing, the original of which shall be given to the person from whom said property is taken, and a duplicate copy of which shall be filed in the office of the Comptroller and shall be open to public inspection.

The Attorney General, or the District or County Attorney of the county of seizure, shall, at the request of the Comptroller, file in the county and

court aforesaid forfeiture proceeding in the name of the State of Texas as plaintiff, and against the owner or person in possession as defendant, if known, and if unknown, then against said property seized and sought to be forfeited. Upon the filing of said proceeding, the Clerk of said court shall issue notice to the owner or person in possession of such property to appear before such court upon the date named therein, which shall not be less than two (2) days from service of such notice, to show cause why the forfeiture aforesaid should not be declared, which notice shall be served by the sheriff of said county. In the event the defendant in said proceeding is a nonresident of the State or his residence is unknown, or in the event the name of such defendant is unknown, upon affidavit by the Comptroller to this effect, notice or process shall be served or published in the mode and manner provided by existing Statutes for service of citation upon nonresidents or unknown defendants, or defendants whose residence is unknown; provided, however, such proceedings may be heard at any time after ten (10) days from completion of the service of such process or the first publication of such notice. And in such cases, the court shall appoint an attorney to represent such defendant, who shall have the rights, duties, and compensation as provided by existing Statutes in cases of attorneys appointed to represent nonresidents and unknown defendants.

In the event final judgment is rendered in the forfeiture proceeding aforesaid, maintaining the seizure, and declaring and perfecting the forfeiture of said seized property, the court shall order and decree the sale thereof to the highest bidder by the Sheriff at public auction in the county of seizure, after ten (10) day's notice by advertisement at least twice in any legal publication of such county, and the proceeds of such sale, less expenses of seizure and court costs, shall be paid into the State Treasury, and, after crediting the motor fuel tax fund with the tax, penalties and interest due, the balance of said proceeds, if any, shall be allocated as the Motor Fuel Tax is herein allocated. In the event the District or County Attorneys file and prosecute such cases, a fee of Fifteen Dollars (\$15) shall be paid to such officers in addition to all other fees allowed by law, which fee shall be collected as court costs out of the proceeds of such sale.

(3) In lieu of the forfeiture proceeding aforesaid, the Comptroller may elect to sell the motor fuel and property seized by him in cases where such property appears by the report or receipt of the officer seizing same to be of the appraised value of Five Hundred Dollars (\$500), or less, by the following summary proceedings:

(a) The Comptroller or his authorized representatives shall notify the person from whom such property was seized either in person or by registered or certified mail if said person's address is known and if unknown the Comptroller shall publish a notice in some newspaper of the county where the seizure was made, describing the property seized and stating the time, place, and cause of their seizure, and requiring any person claiming such property, or any interest therein or thereto, to appear and make such claim within fifteen (15) days from the date of such publication of such notice.

(b) Any person claiming such property so seized, or any interest therein or thereto, within the time specified in such notice, may file with the said Comptroller his claim, stating his interest in the property seized, and may execute a bond to the State of Texas in the penal sum of Two Hundred and Fifty Dollars (\$250), with sureties to be approved by said Comptroller, conditioned that, in case of the establishment of forfeiture of the articles so seized, by final judgment in a court of competent juris-

diction as hereinabove provided, the obligors shall pay all the costs and expenses of the proceeding to obtain such forfeiture; and upon the delivery of such bond to the Comptroller, he shall transmit the same with a certified copy of the report of receipt of the property seized, filed in his office, to the Attorney General, or the County or District Attorney of the county of seizure, and forfeiture proceedings shall be instituted and prosecuted thereon in the court of competent jurisdiction as provided by law.

(c) If no claim is interposed and no bond is given within the time above specified, the Comptroller shall give ten (10) day's notice of a sale of the property under seizure by publication two (2) times in a newspaper of the county of seizure, and, at the time and place specified in such notice, shall sell the property so seized at public auction, and after deducting expenses of seizure, appraisal, custody, and sale, he shall, after crediting the Motor Fuel Tax Fund with the tax, penalties, and interest due, deposit the balance of such proceeds, if any, in the State Treasury, which shall be allocated to the funds to which the tax levied by this Chapter is apportioned.

#### **Art. 9.21 Seizure Not Defense**

The seizure, forfeiture, and sale of motor fuel and any other property named hereinabove under the terms and conditions hereinabove set out, and whether with or without court action, shall not be or constitute any defense or justification to the person owning or having control or possession of such property from criminal prosecution for any act or omission made an offense hereunder, or operate to exempt or relieve said person from liability to the State to pay penalties provided by this law, with or without suit therefor.

#### **Art. 9.22 Waiver**

(1) Authority is hereby conferred upon the Comptroller to waive any proceedings for the forfeiture of any of the property seized under the provisions of this Chapter, or any part thereof, provided that the offender shall pay into the State Treasury through the Comptroller a penalty equal to twice the amount of the tax due on the motor fuel plus all other costs in connection with such seizure. A record of all such settlements and waivers of forfeiture shall be kept by the Comptroller and shall be open to public inspection.

(2) Provided further, that if the Comptroller finds from examination of records or from other investigation that motor fuel has been sold, delivered, or used for any taxable purpose without taxes levied by this Chapter having been paid to the State of Texas, or accounted for by a licensed distributor, he shall have the power to require the person making such taxable sale, delivery or use of such motor fuel to pay into the State Treasury through the Comptroller the taxes due and a penalty equal to the amount of such taxes due. If any person who has made any such taxable sale or taxable use is unable to furnish sufficient evidence to the Comptroller that said taxes have been paid, or accounted for by a licensed distributor, the prima facie presumption shall arise that such motor fuel was sold, delivered, or used without said taxes having been paid.

#### **Art. 9.23 Rules and Regulations**

It is hereby made the duty of the Comptroller to collect, supervise, and enforce the collection of all taxes, penalties, costs, and interest due

or that may become due under the provisions of this Chapter, and to that end the Comptroller is hereby vested with all of the power and authority conferred by this Chapter. Said Comptroller shall also have the power and authority to promulgate rules and regulations, not inconsistent with this Chapter or the Constitutions of this State or the United States, for the enforcement of the provisions of this Chapter and the collection of the revenues levied hereunder.

No rule or regulation for which a penalty is prescribed by the Comptroller shall be adopted by the Comptroller except after notice and hearing. Notice of such hearing shall be given by publication one time in three (3) newspapers of general circulation in this State. Such notice shall specify the date and place of hearing and the subject matter of the proposed rule or regulation and shall constitute sufficient notice to all parties. The date of hearing shall be not less than ten (10) days from the date of publication of notice. At such hearing any person, either by himself or by an attorney, may present relevant facts either in support or opposition thereto. The Comptroller shall, upon a finding of facts, have the authority and power to adopt, modify, nullify, or alter such rules and regulations.

Upon the final adoption of any rule or regulation, the Comptroller shall cause the same to be published one (1) time in a newspaper of general circulation in this State and the same shall have the force and effect of law as of the date of publication, unless a subsequent date is specified therein. The publication thereof shall be sufficient notice to all parties. Any person who violates any valid rule and regulation or any provision thereof shall be subject to the penalty as prescribed in Article 9.26 of this Chapter.

#### **Art. 9.24 Comptroller May Act**

The Comptroller, or any duly authorized representative under the direction of the Comptroller, shall, for the purpose contemplated by this Chapter, have power to issue subpoenas, compel the attendance of witnesses, administer oaths, certify to official acts, take depositions within or without the State of Texas, as now provided by law, and compel the production of pertinent books, accounts, records and documents.

If any witness refuses to obey such subpoena or refuses to produce any pertinent books, accounts, records, or documents, named in such subpoena and in the possession or control of said witness, or if any witness in attendance before the Comptroller or one of his authorized representatives refuses without reasonable cause to be examined or to answer any legal or pertinent question, or to produce any book, record, paper, or document when ordered to do so by the Comptroller or his authorized representative, said Comptroller or representative shall certify the facts and the names of the witnesses so failing and refusing to appear and testify, or refusing access to the books, records, papers, and documents, to the District Court having jurisdiction of the witness; said Court shall thereupon issue proper summons to said witness to appear before the said Comptroller, or his authorized representatives, at a place designated within the jurisdiction of said Court, on a day to be fixed, to be continued as occasion may require, and give such evidence and open for inspection such books, records, papers, and documents as may be required for the purpose of enforcing the provisions of this Chapter. Upon failure to obey such summons the Judge before whom the matter shall come for hearing shall examine under oath such witness or person, and such person shall be given an opportunity to be heard; and if the Judge shall de-

termine that such person has refused, without reasonable cause or legal excuse, to be examined or answer a legal or pertinent question, or to produce a book, record, paper, or document, which he was ordered to bring or produce, he shall forthwith punish the offender as for contempt of court.

Subpoenas shall be served and witness fees and mileage paid as in civil cases in the District Court in the county to which such witness shall be called. Witnesses subpoenaed at the instance of the Comptroller, or his authorized representatives, shall be paid their fees and mileage by the Comptroller out of funds appropriated for court costs to said Comptroller.

The Comptroller may, if necessary to enforce the provisions of this Article, require such number of his representatives as he deems necessary to enforce the provisions hereof to subscribe to the constitutional oath of office, a record of which shall be filed in the office of the Comptroller.

#### Art. 9.25 Enforcement Fund, Allocation of Revenue

Before any diversion or allocation of the motor fuel tax collected under the provisions of this Chapter is made, one per cent (1%) of the gross amount of said tax shall be set aside in the State Treasury in a special fund, subject to the use of the Comptroller in the administration and enforcement of the provisions of this Chapter, and so much of said proceeds of one per cent (1%) of the motor fuel tax paid monthly as may be needed in such administration and enforcement, be and is hereby appropriated for said purpose. Any unexpended portion of said fund so specified shall, at the end of each fiscal year, revert to the respective funds in the proper proportions to which the Motor Fuel Tax Fund levied by this Chapter is allocated at the end of each fiscal year.

Each month the Comptroller of Public Accounts shall, after making the deductions for refund purposes as provided in Article 9.13 of this Chapter, and for the enforcement of the provisions of this Chapter, allocate and deposit the remainder of the taxes collected under the provisions of this Chapter, in the proportions as follows: One-fourth ( $\frac{1}{4}$ ) of such tax shall go to, and be placed to the credit of, the Available Free School Fund; one half ( $\frac{1}{2}$ ) of such tax shall go to and be placed to the credit of the State Highway Fund for the construction and maintenance of the State Road System under existing laws; and from the remaining one-fourth ( $\frac{1}{4}$ ) of such tax the Comptroller shall: (1) place to the credit of the County and Road District Highway Fund an amount determined by the Board of County and District Road Indebtedness and certified by the Board to the Comptroller of Public Accounts prior to August 31st each year, for the fiscal year beginning September 1st each year, to be required in addition to any and all funds already on hand, for the payment by the Board of the principal, interest and sinking fund requirements for each year, on all bonds, warrants or other legal evidences of indebtedness heretofore issued by counties or defined road districts of this State, which mature on or after January 1, 1933, insofar as amounts of same were issued for and proceeds have been actually expended in the construction of roads that constituted and comprised a part of the system of designated state highways on September 17, 1932, or which subsequent to such date and prior to January 2, 1939, have been designated a part of the System of State Highways and declared by the Board of County and District Road Indebtedness prior to January 2, 1945, to be eligible to participate in the distribution of the moneys in the County and Road District Highway Fund under the provisions of existing laws; (2) for the fiscal year

beginning September 1, 1951, and each fiscal year thereafter, the Comptroller shall place to the credit of the Fund known as the County and Road District Highway Fund the sum of Seven Million, Three Hundred Thousand Dollars (\$7,300,000), said amount to be provided on the basis of equal monthly payments, payable on the first day of each calendar month, which sum shall be allocated by the Board of County and District Road Indebtedness to all of the counties of Texas not later than September 15th of each year, through the Lateral Road Account, as provided under Subsection (h) of Section 6 of Chapter 324 of the General and Special Laws of the Forty-eighth Legislature, Regular Session, 1943, as amended by Section 1 of Chapter 319, Acts of the Fiftieth Legislature, 1947; and (3) the Comptroller shall place to the credit of the State Highway Fund the remainder of such one-fourth ( $\frac{1}{4}$ ) of such tax, said amount to be provided on the basis of equal monthly payments, payable on the first day of each calendar month, which sum shall be used by the State Highway Department for the construction and improvement of Farm to Market Roads having the same general characteristics as the roads eligible for construction under Subsection 4b of Article XX of House Bill No. 8, Chapter 184, Acts of the Regular Session of the Forty-seventh Legislature, as amended.

#### **Art. 9.26 Misdemeanor Penalties**

If any person (a) shall refuse to permit the Comptroller, the Attorney General, or their authorized representatives, to inspect, examine and audit any books and records required to be kept by a distributor, refund dealer, or dealer, or (b) shall refuse to permit said persons to inspect and examine any plant, equipment, materials, or premises where motor fuel is produced, processed, stored, sold, delivered or used, or (c) shall refuse to permit said persons to measure or gauge the contents of all storage tanks, pumps or containers on said premises, or take samples therefrom, or (d) shall conceal any motor fuel for the purpose of violating any provision of this Chapter, or (e) shall transport motor fuel in a motor vehicle with pipe or tube connection from the cargo tank or container to the carburetor of said motor vehicle, or (f) shall sell or distribute motor fuel from a fuel tank or auxiliary fuel tank with a direct or indirect connection to the carburetor of a motor vehicle, or (g) if any dealer shall fail or refuse to keep in Texas for a period of time required by law, any books or records required to be kept by said person, or (h) if any dealer, or the agent or employee of any dealer, shall knowingly make any false entry or fail to make entry in the books and records required to be kept by a dealer, or (i) if any refund dealer shall refuse to surrender his refund dealer's license to the Comptroller upon suspension or cancellation of said license, or (j) shall refuse to surrender to the Comptroller all unissued invoices of exemption upon the suspension or cancellation of said license, or if any person (k) shall fail or refuse to comply with any provision of this Chapter, or shall violate the same, or (l) shall fail or refuse to comply with any rule and regulation duly promulgated by the Comptroller, or shall violate the same, said person or persons shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200).

#### **Art. 9.27 Felony Penalties**

(a) Whoever shall knowingly transport in any manner any motor fuel, casinghead gasoline, drip gasoline, natural gasoline, or absorption gasoline, under a false manifest, or (b) whoever shall knowingly transport

any of the foregoing named commodities in any quantity, for which a manifest is required to be carried, without then and there possessing or exhibiting upon demand by an authorized officer, a manifest, containing all the information required to be shown thereon, or (c) while transporting any of the foregoing named commodities, shall wilfully refuse to stop the motor vehicle he is operating when called upon to do so by a person authorized hereunder to stop said motor vehicle, or (d) shall refuse to surrender his motor vehicle and cargo for impoundment when ordered to do so by a person authorized hereunder to impound said motor vehicle and cargo, or (e) whoever shall make a first sale, distribution, or use of motor fuel, upon which a tax is required to be paid by law, without then and there holding a valid distributor's permit issued by the Comptroller, or (f) whoever as a distributor shall fail or refuse to make and deliver to the Comptroller a report containing the information required by law to be made and delivered to said Comptroller, or (g) whoever shall knowingly make and deliver to the Comptroller any false or incomplete report required by law to be made and delivered to the Comptroller by a distributor, or (h) whoever as a distributor shall fail or refuse to keep in Texas for the period of time required by law any books and records required to be kept by a distributor, or (i) whoever shall knowingly make any false entry or shall wilfully fail to make entry in any books and records required to be kept by a distributor; or (j) whoever shall wilfully forge or falsify any invoice of exemption prescribed by law, or (k) whoever shall wilfully and knowingly make any false statement in any claim for a tax refund delivered to or filed with the Comptroller, shall be guilty of a felony and upon conviction, shall be punished by confinement in the State Penitentiary for not more than five (5) years or by confinement in the county jail for not less than one (1) month nor more than six (6) months, or by a fine of not less than One Hundred Dollars (\$100) nor more than Five Thousand Dollars (\$5,000), or by both such fine and imprisonment. In addition to the foregoing penalties, it is herein provided that a felony conviction for any of the above named offenses shall automatically forfeit the right of said convicted person to obtain a permit as a distributor of motor fuel, or as a refund dealer, for a period of two (2) years from the date of such conviction.

Provided, that if any penalties prescribed elsewhere in this Chapter shall overlap as to offenses which are also punishable under Article 9.27 of this Chapter, then the penalties prescribed in the said Article 9.27 shall apply and control over all such penalties. Venue of prosecution under Article 9.27 shall be in Travis County, Texas, or in the county in which the offense occurred.

CHAPTER 10

SPECIAL FUELS TAX

Art.

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**Art. 10.01 Short Title**

This Chapter, and any amendments thereto, shall be known and may be cited as the "Special Fuels Tax Law."

**Art. 10.02 Definitions**

The following words and terms, as used in this Chapter, are defined as follows unless the context clearly indicates a different meaning:

(1) "Special fuels" means all combustible gases and liquids suitable for the generation of power for the propulsion of motor vehicles, including "liquefied gas" and "distillate fuel" as defined in (2) and (3) hereinbelow, except that the term "special fuels" shall not include "motor fuel" as defined in the motor fuel tax law by Chapter 9, Article 9.01 of this Act.

(2) "Liquefied gas" means all combustible gases which exist in the gaseous state at sixty (60) degrees Fahrenheit and at a pressure of fourteen and seven-tenths (14.7) pounds per square inch absolute.

(3) "Distillate fuel" means diesel fuel, kerosene, and any other liquid suitable for the generation of power for the propulsion of motor vehicles, except liquefied gas as defined in (2) above and motor fuel as defined in Article 9.01 of Chapter 9 of this Act.

(4) "Bulk" as used in connection with the sale or handling of special fuels, means a quantity of distillate fuel in excess of five (5) gallons, and



any quantity of liquefied gas other than in cylinders containing one hundred (100) pounds or less.

(5) "Motor vehicle" means any automobile, truck, pickup, jeep, station wagon, bus or similar vehicle, propelled by a motor or internal combustion engine upon the public highways; provided, that any tractor, combine, or other vehicle or machine designed primarily for use off the public highways shall be deemed to be a motor vehicle when propelled or serviced with special fuels for propulsion, upon the public highways.

(6) "Supplier" means any person who delivers special fuels to dealers or users (including locations of the supplier) for redelivery by them into the fuel supply tanks of motor vehicles.

(7) "Dealer" means and includes every person who sells any special fuels at retail and delivers such special fuels into the fuel supply tanks of motor vehicles.

(8) "User" means and includes every person who delivers any special fuels into the fuel supply tanks of motor vehicles owned or operated by him: "User" also means any person who imports special fuels into this State in the fuel supply tanks of motor vehicles owned or operated by him.

(9) "Person" means every individual, firm, association, joint stock company, syndicate, partnership, copartnership, corporation (public, private, or municipal), trustee, agency or receiver.

(10) "Public highway" means and includes every way or place of whatever nature open to the use of the public as a matter of right for the purpose of vehicular travel including toll roads, and notwithstanding that the same may be temporarily closed for the purpose of construction, reconstruction, maintenance or repair.

(11) "Comptroller" means Comptroller of Public Accounts of the State of Texas.

In each case the singular of a word used in this Chapter shall be deemed to embrace the plural, and the plural shall embrace the singular.

### Art. 10.03 Levy of Tax

(1) An excise tax is hereby levied and imposed upon the use of special fuels for the propulsion of motor vehicles upon the public highways of this State at rates of five cents (5¢) per gallon of liquefied gas, and six and five-tenths cents (6.5¢) per gallon of distillate fuel, so used, which said tax or taxes shall be collected, reported, and paid as hereinafter provided.

(2) Provided, however, that in lieu of the tax rates specified and levied hereinabove an excise tax shall be and is hereby levied and imposed at four cents (4¢) per gallon of liquefied gas and six cents (6¢) per gallon of distillate fuel used for the propulsion of buses owned by a transit company (a) the greater portion of whose business is the transportation of persons within the limits of an incorporated city or town in conveyances designed to transport twelve (12) or more passengers; (b) which holds a franchise from such city or town; (c) whose rates are regulated by such city or town; and (d) which pays to such city or town a tax on its gross receipts, or any municipally owned and operated transit company.

(3) Every supplier shall collect the tax, at the rate imposed, on each gallon of special fuels delivered to non-bonded dealers or users and shall report and pay to this State the tax so collected. Provided, however, other deliveries of special fuels may be made without collecting the tax otherwise imposed when delivery is made by the supplier into separate storage facilities maintained by dealers when such storage facilities are physically separated from motor vehicle fueling units and prominently

labeled "NOT FOR HIGHWAY USE" in plain view of the public and in letters of not less than two (2) inches in height.

(4) Every dealer shall collect the tax, at the rate imposed, on each gallon of special fuels delivered by him into the fuel supply tanks of motor vehicles and shall report and pay to this State the tax so collected, unless said tax has been paid to a licensed supplier.

(5) Every user shall report and pay to this State the tax, at the rate imposed, on each gallon of special fuels delivered by him into the fuel supply tanks of motor vehicles, unless said tax has been paid to a licensed supplier. Every user shall also report and pay the tax, at the rate imposed, on each gallon of special fuels imported into this State in the fuel supply tanks of motor vehicles owned or operated by him and consumed in the operation of such motor vehicles upon the public highways of this State. No permit shall be required and no tax shall be paid on special fuels imported in the fuel supply tanks of any motor vehicle when said fuel supply tanks, and any additional containers, have an aggregate capacity of not more than thirty (30) gallons, and if said motor vehicle is not operated by said user for hire, or compensation, or for commercial purposes.

The delivery of special fuels into the fuel supply tanks of tractors, combines or other vehicles or machines designed primarily for non-highway travel for propelling such vehicles or machines over the public highways from one job of custom work performed for others for hire or compensation to another such job, or in hauling goods, wares, merchandise or other commodities over the public highways shall constitute and be deemed to mean the delivery of special fuels into the fuel supply tanks of motor vehicles.

(6) Every licensed supplier shall deduct the tax on one per cent (1%) of the taxable gallons of special fuels sold, delivered or used by him in the payment of taxes to the State of Texas, which deduction or allowance shall be apportioned among the supplier and dealers who purchase said taxable fuels as follows:

Every supplier who makes a bulk sale of special fuels to a dealer, upon which sale the tax is required to be collected, shall set out the tax separately on the invoice and deduct one half of one per cent ( $\frac{1}{2}$  of 1%) of the amount of such tax and the balance shall be the amount of tax the supplier is entitled to collect from such dealer; any dealer or user who is licensed to report and pay taxes directly to this State on special fuels sold or used by him shall be entitled to deduct one half of one per cent ( $\frac{1}{2}$  of 1%) of the taxes paid directly to the State of Texas by him.

The above deductions or allowances shall be for evaporation and handling losses, and for the expense of collecting taxes, making reports and tax remittances and keeping records.

(7) No city, town, county, or other political subdivision of this State shall levy or collect any excise tax on the sale or use of special fuels.

#### **Art. 10.04 Dual Carburetion—Presumption of Use**

Any person who operates a motor vehicle that is equipped to use motor fuel and special fuels interchangeably in the propulsion of said motor vehicle shall be prima facie presumed to have used taxable special fuels exclusively in the operation of said motor vehicle, unless proof of the amount of motor fuel used is maintained for the time and in such form as the Comptroller may require by rules and regulations.

**Art. 10.05 Unlawful Operations of Motor Vehicles**

(1) It is unlawful to transport special fuels upon the public highways in any cargo tank from which special fuels are sold or delivered which has a connection by pipe, tube, valve, or otherwise with the carburetor or with the fuel supply tank feeding the carburetor of the motor vehicle transporting said products.

(2) It is unlawful to operate with special fuels any motor vehicle licensed for operation upon the public highway on which a speedometer is not kept at all times in good operating condition to correctly measure and register the miles traveled by such motor vehicle; and a conviction or judgment secured in any criminal or civil action by the State against any person for willful violation of or failure or refusal to comply with such provisions of law shall forfeit the right of such offender to purchase special fuels in this State without paying the tax thereon for a period of six (6) months from the date final judgment is entered. This provision shall not be construed as prohibiting such person from claiming refund of the tax paid on special fuels purchased and used off the public highways of this State.

**Art. 10.06 Unlawful Sales**

Except in the case of tax-paid deliveries into the fuel supply tanks of motor vehicles, it is unlawful to make bulk sales of special fuels to any person who (1) is not licensed as a supplier, or (2) is not licensed as a dealer or user of special fuels, or (3) does not furnish a signed statement that none of the special fuels purchased will be delivered by him or permitted by him to be delivered into the fuel supply tanks of motor vehicles. A taxable use of the special fuels so purchased without securing a user's permit shall, in addition to the penal provisions hereinafter prescribed, forfeit the right of said person to purchase special fuels tax-free for a period of one year from the date of such offense. Except as otherwise prescribed by rule and regulation of the Comptroller, such statement shall be effective from its date of execution to the end of the calendar year, unless revoked in writing by the purchaser after use of any special fuels so purchased, or after becoming licensed as a user. The furnishing of such statements shall be waived for a period of six (6) months from the effective date of this law, and not thereafter.

**Art. 10.07 Tax Liability on Leased Motor Vehicles**

Any user who as lessee, in furtherance of his business, enters into a lease or a contract or other arrangement with another person for the operation of a motor vehicle, the operation of which will create a liability for the tax herein imposed, shall be deemed to be the operator of said motor vehicle or vehicles and shall report and pay the tax accruing by reason of the use under such lease or contract. This provision shall not be construed as relieving any lessor or person acting as a user from the payment of the tax herein imposed in cases where the lessee is not qualified as a licensed and bonded user as required herein. Nothing herein shall be construed as requiring the filing of more than one (1) report covering a given special fuel use operation or as requiring the payment of the tax herein imposed more than once on the same special fuels.

**Art. 10.08 Optional Computation of Tax**

In the event the tax herein imposed on special fuels imported into this State in the fuel supply tanks of motor vehicles and the tax on special fuels used in motor vehicles owned or operated by licensed supplier or

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

other persons acting as users can be more accurately determined on a mileage basis (that is by determining and using the total number of miles traveled and the total gallons of fuel consumed), or in case it is more practicable to so determine the tax, the Comptroller is hereby authorized to approve and adopt such basis.

#### **Art. 10.09 Application for Permits**

Every person defined herein as a supplier or dealer or user shall secure from the Comptroller the kind and class of permit required herein to act in such capacities or to perform such functions. Applications, verified by affidavit, shall be filed with the Comptroller for any such permit on a form prescribed by the Comptroller, showing the kind and class of permit desired, and such information as the Comptroller may require.

#### **Art. 10.10 Bonds**

(1) Every person who is authorized by permit or required by law to make remittances or payments directly to this State of taxes collected upon the sale or delivery of special fuels or of taxes incurred upon the use of said products shall file with his application for permit a bond in an amount to be set by the Comptroller at not less than three (3) times the amount of taxes that will accrue or may be expected to accrue during any month of the calendar year, but which bond shall never be less than One Thousand Dollars (\$1,000) if filed by a supplier nor less than Five Hundred Dollars (\$500) if filed by a dealer or user.

Every such bond shall be executed by a surety company authorized to do business in this State, payable to the State of Texas, and shall remain in force from the date it is made effective to the end of the calendar year, unless released by the Comptroller as herein provided. Such bond shall be conditioned upon the full, complete, and faithful performance by the person for whom it is issued of all of the conditions and requirements imposed on said person by this Chapter, or by rules and regulations promulgated by the Comptroller, and shall expressly guarantee the remittance or payment to the State of Texas within the time prescribed by law of all taxes, penalties, interest, and costs required herein to be remitted or paid to this State by said person. Any such bond which is continuous in form may be continued in effect for a succeeding calendar year by a renewal certificate, which certificate shall have all the force and effect of an original bond.

(2) If the amount of any existing bond becomes insufficient, or any surety on a bond becomes unsatisfactory or unacceptable, the Comptroller may require the filing of a new or an additional bond. The Comptroller shall also have authority to require the filing of reports and tax remittances at shorter intervals than one month if, in his opinion, an existing bond has become insufficient. If any supplier, or dealer, or user licensed hereunder shall fail or refuse to file a new or an additional bond within ten (10) days after demand or shall fail or refuse to file reports and remit or pay taxes at the intervals fixed by the Comptroller, his permit shall be revoked or suspended in the manner herein provided. The filing of a new bond, or the cancellation or suspension of a permit, or recoveries on any bond, shall not invalidate an existing bond, but any surety on a bond shall be released and discharged from any and all liability accruing under such bond after the expiration of thirty (30) days from the date such surety has filed with the Comptroller at his office in Austin, Travis County, Texas, written request to be released and discharged. Such request shall not operate to release or discharge such surety from liabilities incurred prior to the expiration of said thirty-day

period. The Comptroller shall, upon receipt of any such request, promptly notify the person in whose behalf such bond was filed, and unless said person shall file with the Comptroller a new bond in the amount and form herein provided within fifteen (15) days from the date of such notice, the Comptroller shall proceed to cancel the permit of said person.

(3) Any person who has filed with the Comptroller a bond as a motor fuel distributor under the terms and conditions provided in the Motor Fuel Tax Law, Chapter 9, Article 9.07, of this Act, may extend the terms and conditions of said distributor's bond, by rider or bond form approved by the Comptroller, to include coverage of all liabilities and conditions imposed by this Chapter upon the supplier, or the dealer, or the user to whom said extension is made applicable. The amount of bond that may be required of a supplier, dealer or user shall not exceed the maximum amount provided by said motor fuel tax law for a motor fuel distributor's permit.

(4) Any applicant for a permit may, in lieu of filing a surety bond, deposit cash in the amount of bond required in the Suspense Account of the State Treasury, or may deposit securities of a par value equal to the amount of bond required and of a class in which funds of the University of Texas may be legally invested.

Such cash or securities shall be released within sixty (60) days after cancellation or surrender of any permit held by the person in whose behalf they were deposited when said permit holder has been cleared of all tax liability by the Comptroller.

The Comptroller is hereby authorized and empowered to withdraw and use any such cash and to sell any such securities and use the proceeds therefrom to pay off and satisfy any judgment secured in any action by this State to recover special fuels taxes, costs, penalties, and interest found to be due this State by any person in whose behalf such cash or such securities were deposited. Any such person may acknowledge in writing the correctness of the State's claim against him for taxes, costs, penalties and interest and may authorize the use of said cash or the proceeds from the sale of such securities to pay on or pay off the claim without having suit filed.

#### Art. 10.11 Permits

(1) Upon approval of an application and approval of bond if a bond is required, the Comptroller shall issue to the applicant a permit authorizing him to engage in the kind of business or other operations or to perform the functions set out in and authorized by the class of permit so issued. The permits shall be issued for each calendar year, or any unexpired part of a year, and shall be effective from the date of issue to the end of such calendar year, unless revoked or suspended for cause, as hereinafter provided. Such permits shall be of the kinds and classifications as set out hereinbelow:

##### NON-BONDED SUPPLIER PERMITS.

Authorizing persons to engage in business as suppliers of special fuels to Bonded Dealers and Bonded Users only.

##### BONDED SUPPLIER PERMITS.

Authorizing persons to engage in business as suppliers of special fuels to either Bonded or Non-Bonded Dealers and Users.

##### NON-BONDED DEALER PERMITS.

Authorizing persons whose retail sales of special fuels are predominantly for delivery into the fuel supply tanks of motor vehicles, to engage in business as dealers.

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

**BONDED DEALER PERMITS.**

Authorizing persons whose retail sales of special fuels are not predominantly for delivery into the fuel supply tanks of motor vehicles to engage in business as dealers.

**NON-BONDED USER PERMITS.**

Authorizing persons whose purchases of special fuels are predominantly for delivery by them into the fuel supply tanks of motor vehicles owned or operated by them, to act as users.

**BONDED USER PERMITS.**

Authorizing persons whose purchases of special fuels are not predominantly for delivery by them into the fuel supply tanks of motor vehicles owned or operated by them to act as users.

**BONDED USER IMPORT PERMITS.**

Authorizing persons who import special fuels into this State in the fuel supply tanks of motor vehicles owned or operated by them to act as users.

The Comptroller shall determine from the information shown in the application or other investigation the kind and class of permit to be issued.

A supplier may operate under his supplier's permit as a dealer or as a user without securing a separate permit but he shall be subject to all other conditions, requirements, and liabilities imposed by this Chapter upon a dealer or a user. A licensed dealer may use special fuels in motor vehicles owned or operated by him without securing a separate permit as a user, subject to all conditions, requirements, and liabilities imposed herein upon a user.

All permits shall be posted in a conspicuous place or kept available for public inspection at the principal place of business of the owner thereof. A certificate of the permit shall be issued for and kept on display at each additional place of business or other operation of the permit holder. Persons holding users' import permits shall reproduce the permit by photostat or other method for each motor vehicle operated by said permit holders and shall carry a copy of said permit with each motor vehicle while operating in Texas.

(2) The Comptroller, or any authorized representative of the Comptroller, is hereby authorized to cancel or to suspend any permit issued under the terms of this Chapter or to refuse the issuance, extension, or reinstatement of any permit to any person who has violated, or has failed to comply with, any rule and regulation of the Comptroller or any provision of this Chapter. Before any such permit may be cancelled or suspended, or the issuance, or extension, or reinstatement of any such permit may be refused, the Comptroller shall give the owner of such permit, or applicant therefor, not less than five (5) days notice of a hearing at the office of the Comptroller in Austin, Travis County, Texas, or at any district office maintained by the Comptroller's Department, granting said owner or applicant an opportunity to show cause before the Comptroller, or his authorized representative, why such action should not be taken. Such notice shall be in writing and may be mailed by certified or registered mail to said owner or applicant at his last known address or may be delivered by a representative of the Comptroller to the owner or applicant, and no other notice shall be required. The Comptroller may prescribe his own rules of procedure and evidence for such hearings.

If, after said hearing or opportunity to be heard, the permit is cancelled, as above provided, all taxes which have been collected or required to be collected upon the sale or delivery of special fuels and all taxes which have accrued upon the use of said product shall ipso facto become

delinquent, and the permittee shall forthwith file a report for any period not covered by preceding reports filed by him to the date of cancellation and shall remit and pay to the State of Texas all taxes which have been collected or required to be collected and which have accrued from the sale or delivery or use of special fuels up to and including the date of cancellation. A new permit shall not be issued to any person who is delinquent in the payment of taxes, penalties or interest.

After being given notice of any such order of cancellation, it shall be unlawful for any person to continue to operate his business under a cancelled permit.

An appeal from any order of the Comptroller, or his authorized representative, cancelling or refusing the issuance, extension or reinstatement of any permit may be taken to the District Court of Travis County, Texas, by the aggrieved permittee or applicant. The trial shall be de novo under the same rules as ordinary civil suits with the following exceptions, which shall be considered literally, viz.: (1) all appeals shall be perfected and filed within thirty (30) days after the effective date of the order, decision, or ruling of the Comptroller, or his authorized representative; (2) such proceedings shall have precedence over all other causes of a different nature; (3) trial of all such cases shall commence within ten (10) days from the filing thereof; (4) the order, decision, or ruling of the Comptroller, or his authorized representative, may be suspended or modified by the Court pending a trial on the merits.

#### **Art. 10.12 Records Required**

(1) Every supplier, dealer, or user holding a permit or required by law to secure a permit to sell, deliver, or use special fuels shall keep for a period of two (2) years open to inspection at all times by the Comptroller or Attorney General, or their authorized representatives, a complete record of all liquefied gas and all distillate fuel purchased or received and all of such products sold, delivered, or used by them showing the date of each receipt, the name and address of the person from whom purchased or received, the number of gallons of each product received at each place of business or place of storage in Texas, and showing the date of each sale or delivery, the number of gallons of each kind of product sold or delivered for taxable purposes, and the number of gallons of each product sold or delivered for any purpose not subject to the tax imposed herein, and if sold in bulk quantities the name and address of the purchaser, and showing inventories of liquefied gas and of distillate fuel on hand at each place of business at the end of each month.

(2) Each bulk sale and delivery of special fuels shall be covered by an invoice with the name and address of the supplier or dealer and a serial number printed thereon, showing the complete information set out hereinabove for each such sale, one counterpart of which shall be delivered to the purchaser and another counterpart kept by the supplier or dealer for the period of time and purposes above provided. Each delivery of liquefied gas or distillate fuel into the fuel supply tank of a motor vehicle shall be recorded upon a serially numbered invoice issued in not less than duplicate counterparts on which shall be printed or stamped with a rubber stamp showing the name and address of the supplier, dealer, or user making such delivery and on which shall be shown, in spaces to be provided on such invoice, the date of delivery, the number of gallons and kind of special fuels so delivered, the total mileage recorded on the speedometer of the motor vehicle into which delivered, and the State highway license number of said motor vehicle.

The invoice shall reflect that the tax has been paid or accounted for on each of the products delivered. One counterpart of the invoice shall be kept by the supplier, dealer, or user making such delivery as a part of his record and for the period of time and purposes hereinabove provided. Another counterpart shall be delivered to the operator of the motor vehicle and carried in the cab compartment of the motor vehicle for inspection by the Comptroller or his representatives for a period of thirty (30) days after the special fuels it covers have been consumed.

(3) Every user shall keep, in addition to his record of deliveries into motor vehicles, a complete record of the total gallons of liquefied gas and the total gallons of distillate fuel used for other purposes during each month and the purposes for which said special fuels were used.

#### **Art. 10.13 Tax Payments—Reports**

(1) Every supplier and dealer who is required herein to collect taxes on the sale or delivery of special fuels and every user who is required to pay taxes on the delivery of special fuels into the fuel supply tanks of motor vehicles or on the use of imported special fuels shall, on or before the 25th day of each calendar month, pay to the State of Texas at the office of the Comptroller in Austin, Travis County, Texas, the amount of such taxes required to be collected and the amount required to be paid during the month next preceding, unless said taxes have been paid by a dealer or user to a licensed supplier as provided in this Chapter. At the time of making such tax payments every supplier, dealer, and user who is required to pay any taxes directly to this State, shall file with the Comptroller a report of special fuels handled, in the form and manner as hereinafter provided.

(2) Every supplier shall, on or before the 25th day of each calendar month, make and file with the Comptroller upon a form prescribed by the Comptroller an itemized report, verified by affidavit, accounting for the special fuels handled during the preceding month which report shall show the quantities of liquefied gas and the quantities of distillate fuel purchased or received from sources within this State and the quantities of each product received from sources outside of this State, the quantities of each of said products sold or delivered to dealers and users upon which taxes were required to be collected, the quantities of each product sold and delivered to dealers and users without collecting said taxes, the quantities of each product sold and delivered into the fuel supply tanks of motor vehicles, the quantities of each product delivered into the fuel supply tanks of motor vehicles owned or operated by such supplier and the quantities of each product used by him for other purposes, the total quantities of each product sold or delivered to persons other than dealers, users, or operators of motor vehicles, the quantities of each product lost by fire or other accident, the quantities lost by shrinkage or evaporation, and the total quantities of each product on hand at the beginning and at the end of the month covered by such report. The report shall include a schedule of the total quantities of liquefied gas and distillate fuel sold or delivered to dealers and users without collecting taxes thereon, and the names and addresses of such dealers or users. The Comptroller may in his discretion require selective schedules from any supplier with respect to any purchases, sales or deliveries of special fuels. Every supplier shall attach legal tender to said report or make proper form of money order or exchange payable to the State Treasurer in the amount of taxes due for the period covered by the report.

(3) Every dealer who purchases or acquires special fuels tax-free for taxable resale or delivery of any part of said products shall, on or before



the 25th day of each calendar month, make and file with the Comptroller on forms prescribed by the Comptroller an itemized report, verified by affidavit, accounting for the special fuels handled during the preceding month which report shall show, the quantities of liquefied gas and the quantities of distillate fuel purchased or received and the suppliers from whom received, the quantities of each product sold and delivered into the fuel supply tanks of motor vehicles, the quantities of each product sold and delivered for use off the public highways and the purposes for which purchased, the quantities of each product delivered into the fuel tanks of motor vehicles owned or operated by such dealer and the quantities of each product used by him for other purposes, the quantities of each product lost by fire or other accident, and the total gallons of each product on hand at the beginning and at the end of the month covered by such report. The Comptroller may in his discretion require schedules from any such dealer with respect to any purchases, sales or deliveries of special fuels. Every such dealer shall attach legal tender to said report or make proper form of money order or exchange payable to the State Treasurer in the amount of taxes due for the period covered by the report.

(4) Every user who purchases or acquires special fuels tax-free for taxable use of any part of said products shall, on or before the 25th day of each calendar month, make and file with the Comptroller on forms prescribed by the Comptroller an itemized report, verified by affidavit, accounting for the special fuels handled during the preceding month which report shall show the quantities of liquefied gas and the quantities of distillate fuel purchased or received and the suppliers from whom received, the quantities of each product delivered into the fuel supply tanks of motor vehicles owned or operated by such user, the quantities of each product used off the public highways of this State and the purposes for which used, the quantities lost by fire or other accident or disposed of in any other manner, and the total quantities of each product on hand at the beginning and at the end of the month covered by such report. The Comptroller may in his discretion require schedules from any such user with respect to any purchases, deliveries or uses of special fuels. Every such user shall attach legal tender to said report or make proper form of money order or exchange payable to the State Treasurer in the amount of taxes due for the period covered by the report.

(5) Every user who imports special fuels in the fuel supply tanks of motor vehicles operated by him on the public highways of Texas for hire or compensation or for commercial purposes shall, on or before the 25th day of each calendar month, make and file with the Comptroller on forms prescribed by the Comptroller an itemized report, verified by affidavit, accounting for all special fuels imported and all special fuels used in such motor vehicles during the preceding calendar month, which report shall show for each motor vehicle operated by said user into or from the State of Texas for such purposes, the total miles traveled in Texas and elsewhere, the total quantities of liquefied gas or distillate fuel consumed by each motor vehicle in such travel and the average miles traveled per gallon of fuel consumed, the total miles traveled in the State of Texas and the quantities of liquefied gas or distillate fuel purchased in Texas and delivered into the fuel supply tanks of each such motor vehicle, and such other information pertinent to the use of special fuels in such motor vehicles and the taxes paid or accrued thereon, as the Comptroller may require. The Comptroller may in his discretion require schedules to be submitted as a part of such report with

respect to any special fuels purchased or used in connection with such operations. Every such user shall attach legal tender or make proper form of money order or exchange payable to the State Treasurer in the amount of taxes due for the period covered in the report.

(6) When it shall appear that a supplier, dealer or user to whom the provisions of this Chapter shall apply has erroneously reported and remitted or paid more taxes than were due the State of Texas upon any special fuels during any taxpaying period, either on account of a mistake of fact or law, it shall be the duty of the Comptroller to credit the total amount of taxes due by such supplier, dealer or user for the current period with the total amount of taxes so erroneously paid, or said supplier, dealer or user may file claim for refund of the taxes erroneously paid. Such credit shall be allowed or the tax refund claim paid before any penalties and interest shall be applicable.

#### **Art. 10.14 Refunds**

(1) Except as otherwise provided by Article 10.15 of this Chapter, any licensed dealer who shall have paid the tax imposed by this Chapter upon any liquefied gas or distillate fuel which has been used or sold for use by such dealer for any purpose other than propelling a motor vehicle upon the public highways of this State, or which has been sold to the United State Government for the exclusive use of said government, and any licensed user who shall have paid said tax upon any liquefied gas or distillate fuel which has been used by such user for any purpose other than propelling a motor vehicle upon said public highways, may file claim for a refund of the tax or taxes so paid, less one per cent (1%) allowed suppliers for the expense of collecting and reporting such taxes to this State. Such claims shall be filed with the Comptroller on forms prescribed by the Comptroller and shall show the date of filing and the period covered in the claim, the gallons of liquefied gas and the gallons of distillate fuel sold or used for purposes subject to tax refund, and shall show such other facts and information as the Comptroller may by rule and regulation require. Every such claim shall be supported by an invoice or invoices issued by the claimant, as hereinafter provided, and shall be verified by affidavit of the claimant and filed in the office of the Comptroller within six (6) months from the date the special fuels were invoiced or required to be invoiced for sale or use, and no claim shall be made by the claimant or approved by the Comptroller when the sale of such special fuels or the appropriation for use occurs more than six (6) months prior to the date the claim is filed.

(2) When liquefied gas or distillate fuel is sold by a dealer or is appropriated for use by a user for any purposes for which a refund of the tax paid on said products may be claimed as provided herein, such dealer or user shall, at the time of each sale or appropriation for use and not thereafter, make out a serially numbered invoice in not less than duplicate counterparts with the name and address of the dealer or user printed thereon which shall show the date of the sale or appropriation for use, the quantities of liquefied gas and/or distillate fuel sold or appropriated for use, the purposes for which said products will be used, as declared by the purchaser or user, and such other information as the Comptroller may require. The invoice shall be signed by the recipient of any such special fuels purchased from a dealer. One counterpart of each invoice shall be kept by the dealer or user for a period of two (2) years open to the inspection of the Comptroller or his authorized representatives, and the other counterpart shall be filed as a part of the claim for tax refund as above provided.

(3) Any dealer or user who shall file claim for refund of the tax on any special fuel which has been delivered into the fuel supply tank of a motor vehicle, or who shall file any invoice in a claim for tax refund upon which any date, figure, signature, or other material information is false or incorrect, shall forfeit his right to the entire amount of the refund claim filed.

(4) If upon examination or investigation the Comptroller finds that the claim is just and that the taxes claimed have been paid by the claimant he shall issue warrant to the claimant in the amount due but no greater amount shall be refunded than has been paid into the State Treasury on any special fuels.

(5) All the moneys paid into the Treasury under the provisions of this Chapter, except the filing fees provided herein, shall be set aside in the special fund known as the Highway Motor Fuel Tax Fund and no part of said fund shall be credited to the Available School Fund until a report is made by the Comptroller to the Treasurer, showing the total maximum amount of refunds that may be required to be paid by the State out of said funds. The Comptroller shall on the 20th day of each month, or as soon thereafter as is possible, compute and ascertain the maximum amount of funds that may be due by the State on the sale of special fuels during the preceding month, upon which a refund may be due, and shall certify to the State Treasurer the maximum amount, and the Treasurer shall reserve said amount each month out of which to pay refunds and shall not distribute that part of said fund until the expiration of the time in which a refund can be made out of said fund, but as soon as said report has been made by the Comptroller and the maximum amount of refunds determined, he shall deduct said maximum amount from the total taxes paid for such month, and apply the remainder of such as provided by law. If the claimant loses, or for any reason fails to receive warrant after it has been issued by the Comptroller, and upon satisfactory proof of such, the Comptroller may issue claimant duplicate warrant as provided in Article 4365, Revised Civil Statutes of Texas.

So much of said fund is hereby appropriated and set aside as may be necessary to pay the refunds provided herein. In no event shall any refund be made to any person in excess of the actual amount paid by such person, and the one per cent (1%) deducted originally by the supplier upon the sale or delivery of the special fuels shall be deducted in computing the refund. The Comptroller shall deduct fifty cents (50¢) from all such refunds as a filing fee, which fee shall be deducted from the warrant issued in payment of such refund which said filing fee shall be set aside for the use and benefit of the Comptroller in the administration and enforcement of the provisions of this Chapter, and for the payment of expenses in furnishing the claim forms and other forms provided for herein, and the same is hereby appropriated for such purpose. All such filing fee shall be paid out on vouchers and warrants in such manner as may be prescribed by law.

#### **Art. 10.15 Exceptions to Tax Refunds**

(1) No tax refunds shall be paid to any person on special fuels used in any construction, maintenance or repair work on or in connection with the public highways of this State when and if such work is paid for from any State funds to which special fuels tax collections are allocated or is paid jointly from any such State funds and Federal funds.

(2) The delivery of special fuels into the fuel supply tanks of any tractor, truck tractor, vehicle, or machine of any kind or description

for use (a) in hauling materials, supplies or products over the public highways to or from, or in connection with, any highway construction, maintenance or repair work, or (b) for use in mowing the right of way of the public highways, when such work is paid for from State funds or State and Federal funds as above provided, shall constitute and be deemed to mean the delivery of special fuels into the fuel supply tanks of motor vehicles for taxable use.

#### **Art. 10.16 Prima Facie Presumptions**

(1) Any supplier, dealer or user who shall fail to keep the records, issue the invoices or file the reports required by this Chapter, shall be prima facie presumed to have sold, delivered or used for taxable purposes all special fuels shown by a duly verified audit by the Comptroller, or any authorized representative thereof, to have been delivered to such supplier, dealer or user and unaccounted for at each place of business or place of storage from which special fuels are sold, delivered or used for any taxable purposes, and the Comptroller is hereby authorized to fix or establish the amount of taxes, penalties and interest due the State of Texas from such records of deliveries or from any records or information available to him and if the tax claim as developed from such procedure is not paid, such claim and any audit made by the Comptroller, or an authorized representative thereof, or any report filed by such supplier, dealer or user, shall be admissible in evidence in any suit or judicial proceedings filed by the Attorney General, and shall be prima facie evidence of the correctness of said claim or audit; provided that the prima facie presumption of the correctness of the claim may be overcome upon the trial by evidence adduced by said supplier, dealer or user.

(2) A certificate under the seal of the Comptroller executed by said Comptroller or his Chief Clerk, setting forth the terms of any order, rule, regulation, report, bond or other instrument referred to in this Chapter, and that the same had been adopted, promulgated, or executed and filed with the Comptroller, and was in force and effect at any date or during any period specified in such certificate, shall be prima facie evidence of all such facts, and such certificate shall be admitted in evidence in any action, civil or criminal, involving such order, rule, regulation, report, bond, or other instrument without further proof of such adoption, promulgation, execution or filing, and without further proof of its contents.

#### **Art. 10.17 Liens**

All taxes, penalties, interest and costs due by any supplier, dealer or user under the provisions of this Chapter and all taxes collected by a supplier or dealer and required to be paid to this State, shall be secured by a preferred lien, first and prior to any and all other existing liens, contract or statutory, legal or equitable, and regardless of the time such liens originated, upon all of the property of any supplier, dealer or user, devoted to or used in his business or other operations as a supplier, dealer or user, which property shall include all plants, storage tanks, warehouses, office buildings, pumps, and equipment, vehicle tanks, trucks, trailers, or other vehicles, stocks on hand of every kind and character whatsoever used or usable in such business or other operations including special fuels and the proceeds from the sale or delivery of special fuels and including cash on hand and in banks, accounts and notes receivable, and any and all other property of every kind and character

whatsoever and wherever situated, which is devoted to such use, and each tract of land on which such plants, storage tanks and other property is located, or which is used in carrying on such business or other operations.

This lien shall not be valid as against any "mortgagee" of a "motor vehicle" as those terms are defined in the Certificate of Title Act, provided such mortgagee does not have actual notice of the State's lien and has complied with the provisions of the Certificate of Title Act prior to the filing by the Comptroller of Public Accounts with the State Highway Department a certificate showing the make, body type and motor number of the motor vehicle upon which a tax lien exists and the amount of the taxes, penalties, interest, and costs due the State. The Comptroller of Public Accounts' certificate is to be filed with the State Highway Department and the State's lien need not be placed of record upon the motor vehicle's certificate of title.

The Comptroller of Public Accounts shall file with the State Highway Department a certificate containing the information above provided in this Section as to any motor vehicle upon which a tax lien exists to secure the payment of the taxes owing by any supplier, dealer or user, and the filing of such certificate by the Comptroller of Public Accounts shall constitute sufficient notice of the existence and the assertion by the State of the statutory lien to secure the payment of the taxes owing to the State by such supplier, dealer or user, and any mortgagee of any mortgage, made after the filing of such certificate with the State Highway Department, shall be deemed to have notice of such lien, and the State's lien upon such motor vehicle shall continue to be a valid and prior lien as to any mortgagee. But such lien shall not be valid as to any mortgagee of a motor vehicle if the lien of such mortgagee was created and recorded prior to the filing of such certificate by the Comptroller of Public Accounts with the State Highway Commission.

#### Art. 10.18 Civil and Statutory Penalties

(1) If any person affected by this Chapter shall fail or refuse to comply with any provision of this Chapter or shall violate the same, or shall fail or refuse to comply with any rule and regulation promulgated hereunder by the Comptroller or shall violate the same, he shall forfeit to the State of Texas as a penalty the sum of not less than Twenty-five Dollars (\$25) nor more than Five Hundred Dollars (\$500). Such penalty, if not paid, shall be recovered in a suit by the Attorney General in a court of competent jurisdiction in Travis County, Texas, or any other court of competent jurisdiction having venue under existing venue Statutes. Provided that in addition to such penalties, if any supplier, dealer or user does not make remittance for any taxes collected, or pay any taxes due the State of Texas by said supplier, dealer or user, within the time prescribed by law said supplier, dealer or user shall upon the first offense forfeit two per cent (2%) of the amount due; and if said taxes are not paid within ten (10) days from the date of notice in writing by the Comptroller that any taxes have not been reported and paid, an additional eight per cent (8%) shall be forfeited; provided that upon each subsequent offense during any calendar year of failing to remit taxes collected or due the State within the time prescribed by law, such supplier, dealer or user shall forfeit twenty-five per cent (25%) of the amount due. All past due taxes and penalties shall draw interest at six per cent (6%) per annum.

(2) The venue of any suit, injunction or other proceedings at law or in equity available for the establishment of collection of any claim

for delinquent taxes, penalties, or interest accruing hereunder, and the enforcement of the terms and provisions of this Chapter, shall be in a court of competent jurisdiction in Travis County, Texas, or in any other court of competent jurisdiction having venue under existing venue Statutes.

#### **Art. 10.19 Impounding Vehicles**

In order to enforce the provisions of this Chapter, the Comptroller or his authorized representatives, or any Highway Patrolman of the Department of Public Safety, any sheriff, constable and their deputies, or any other peace officer, is empowered to stop any motor vehicle which appears to be operating with special fuels for the purpose of examining the invoice required to be carried, and examining any permit or copy thereof that may be required to be carried, to take samples from the fuel supply tanks, and for such other investigations as could reasonably be made to determine whether the taxes have been paid or accounted for by a licensed user upon the special fuels being used to propel the motor vehicle upon the public highways of Texas. If after said examination or other investigation it is found the owner or operator of said motor vehicle has not paid said taxes, or does not possess a valid permit as a user to use such special fuels in motor vehicles operating on said public highways, such authorized officers shall impound the motor vehicle, and unless proof is produced within seventy-two (72) hours from the beginning of impoundment that the owner or operator has paid said taxes, and has paid all other taxes established by audit or investigation by the Comptroller, or his authorized representatives, to be due upon the use of special fuels for the propulsion of motor vehicles upon the public highways of Texas, or that said owner or operator holds a valid user's permit to use special fuels for such purposes, the motor vehicle shall be held until all taxes, penalties and interest found to be due the State and all costs of impoundment have been paid, or until said owner or operator has filed bond with the Comptroller payable to the State Treasurer in an amount equal to twice the amount of taxes, penalties, interest and costs found to be due, to guarantee the payment of such liabilities to the State of Texas.

If the taxes, penalties, interest and costs found to be due are not paid; the Comptroller shall certify the claim to the Attorney General who shall file proceedings to foreclose the State's tax lien upon such motor vehicle; or take such other action to recover the amount due the State as provided by law.

#### **Art. 10.20 Subpoenas**

The Comptroller, or any duly authorized representative under the direction of the Comptroller, shall, for the purpose contemplated by this Chapter, have power to issue subpoenas, compel the attendance of witnesses, administer oaths, certify to official acts, take depositions within or without the State of Texas, as now provided by law, and compel the production of pertinent books, accounts, records, and documents.

If any witness refuses to obey such subpoena or refuses to produce any pertinent books, accounts, records, or documents, named in such subpoena and in the possession or control of said witness, or if any witness in attendance before the Comptroller or one of his authorized representatives refuses without reasonable cause to be examined or to answer any legal or pertinent question, or to produce any books, record, paper, or document when ordered to do so by the Comptroller or his authorized

representative, the Comptroller or representative shall certify the facts and the names of the witnesses so failing and refusing to appear and testify, or refusing access to the books, records, papers, and documents, to the district court having jurisdiction of the witness; said court shall thereupon issue proper summons to said witness to appear before the said Comptroller, or his authorized representatives, at a place designated within the jurisdiction of said court, on a day to be fixed, to be continued as occasion may require, and give such evidence and open for inspection such books, records, papers, and documents as may be required for the purpose of enforcing the provisions of this Chapter. Upon failure to obey such summons the Judge before whom the matter shall come for hearing shall examine under oath such witness or person, and such person shall be given an opportunity to be heard; and if the Judge shall determine that such person has refused, without reasonable cause or legal excuse, to be examined or answer a legal or pertinent question, or to produce a book, record, paper, or document, which he was ordered to bring or produce, he shall forthwith punish the offender as for contempt of court.

Subpoenas shall be served and witness fees and mileage paid as in civil cases in the district court in the county to which such witness shall be called. Witnesses subpoenaed at the instance of the Comptroller, or his authorized representatives, shall be paid their fees and mileage by the Comptroller out of any funds appropriated to said Comptroller.

The Comptroller may, if necessary to enforce the provisions of this Article, require such number of his representatives as he deems necessary to enforce the provisions hereof to subscribe to the constitutional oath of office, a record of which shall be filed in the office of the Comptroller.

#### Art. 10.21 Rules and Regulations

It is hereby made the duty of the Comptroller to collect, supervise, and enforce the collection of all taxes, penalties, interest and costs, due or that may become due under the provisions of this Chapter; and to that end the Comptroller is hereby vested with all of the power and authority conferred by this Chapter. The Comptroller shall also have the power and authority to promulgate rules and regulations, not inconsistent with this law or the Constitutions of this State or the United States, for the enforcement of the provisions of this Chapter and the collection of all taxes, penalties, interest and costs provided in this Chapter.

Upon the adoption of any rule and regulation, the Comptroller shall cause the same to be published one time in a newspaper of general circulation in this State and the same shall have the force and effect of law as of the date of publication, unless a subsequent date is specified therein. The publication thereof shall be sufficient notice to all parties.

#### Art. 10.22 Allocation of Funds

Before allocation of the funds collected hereunder is made one per cent (1%) of the gross amount of said fund shall be set aside in the State Treasury in a special fund for the use of the Comptroller in the administration and enforcement of the provisions of this Chapter and so much of said amount as may be needed is hereby appropriated for said purpose. Any unexpended portion of such fund shall at the end of each fiscal year revert to the respective funds in the proper proportions to which the special fuels taxes are allocated.

Each month the Comptroller shall, after making deductions for refund purposes as provided in Article 10.14 of this Chapter, and for the administration and enforcement of the provisions of this Chapter allocate and deposit the remainder of the taxes collected under the provisions of this Chapter, in the proportions as follows: One-fourth ( $\frac{1}{4}$ ) of such taxes shall go to and be placed to the credit of the Available Free School Fund, and three-fourths ( $\frac{3}{4}$ ) of such taxes shall go to and be placed to the credit of the State Highway Fund.

#### **Art. 10.23 Penalty, Failure to Pay or Conversion of Taxes**

(1) All taxes collected under the provisions of this Chapter shall be for the use and benefit of the State of Texas and shall not be appropriated or diverted to any other use. Said taxes shall be paid over to the State of Texas at the time and in the manner provided in this Chapter.

(2) If any supplier or dealer, or any director, officer, agent, employee, trustee, or receiver of such supplier or dealer, or any person, shall wilfully fail or refuse to pay over to the State of Texas any such tax fund collected by him under the provisions of this Chapter on or before the date such payment is required to be paid under the provisions of this Chapter; such supplier or dealer, or such director, officer, agent, employee, trustee, or receiver of such supplier or dealer, or such person, shall be guilty of a felony and upon conviction shall be punished by confinement in the State penitentiary for not more than ten (10) years, or by confinement in the county jail for not less than one (1) month nor more than one (1) year, or by a fine of not less than Five Hundred Dollars (\$500) nor more than Ten Thousand Dollars (\$10,000), or by both such fine and jail imprisonment.

(3) If any director, officer, agent, employee, trustee, receiver of any supplier or dealer, or any person, shall fraudulently misapply or convert to his own use any tax fund collected for the State of Texas under the provisions of this Chapter by such supplier or dealer, or any director, officer, agent, employee, trustee, receiver of such supplier or dealer, or by such person, which said money has come into the possession of or that is in the care of or under the control of such director, officer, agent, employee, trustee, receiver of such supplier or dealer, or of such person, and which said money is required to be paid to the State of Texas under the provisions of this Chapter, such director, officer, agent, employee, trustee, receiver of such supplier or dealer, or such person shall be guilty of a felony and upon conviction, shall be punished by confinement in the State penitentiary for not more than ten (10) years, or by confinement in the county jail for not less than one (1) month nor more than one (1) year, or by a fine of not less than Five Hundred Dollars (\$500), nor more than Ten Thousand Dollars (\$10,000), or by both such fine and jail imprisonment.

(4) If the penalties prescribed elsewhere in this Chapter overlap as to the offenses punishable under Article 10.23 of this Chapter, then the penalties prescribed in Article 10.23 shall apply and control over all such penalties. Venue of a prosecution under Article 10.23 shall be in Travis County, Texas or in the county where the offense occurred.

#### **Art. 10.24 Felony Penalties**

If any supplier, dealer or user, or any director, officer, agent, employee, or receiver of such supplier, dealer or user (a) shall sell, deliver or use special fuels for any purpose for which a permit is required under the provisions of this Chapter without a valid permit being then



and there held by such supplier, dealer or user, or (b) shall fail or refuse to make and deliver to the Comptroller within the time prescribed by law any report required to be made and delivered to the Comptroller by such supplier, dealer or user, or (c) shall knowingly make and deliver to the Comptroller any report required by law to be made and delivered which is false or incomplete, or (d) shall fail or refuse to keep in Texas for the period of time prescribed by law any records required to be kept in Texas by such supplier, dealer or user, or (e) shall knowingly falsify or make false entry in any records required by law to be kept by such supplier, dealer or user, or (f) shall refuse to permit the Comptroller or any authorized representative of the Comptroller to examine or audit any books or records of such supplier, dealer or user which the Comptroller is authorized by law to examine or audit, or (g) shall refuse to permit the Comptroller or any authorized representative of the Comptroller to inspect or examine any plant, equipment, motor vehicle, material or premises where special fuels are processed, stored, sold, delivered, transported, or used by such supplier, dealer or user, or (h) shall refuse to surrender any motor vehicle for impoundment when such surrender is ordered by a representative of the Comptroller, or any officer authorized by law to impound such motor vehicle, or (i) shall knowingly make any false statement in any claim for a tax refund delivered to or filed with the Comptroller, such supplier, dealer or user, or such director, officer, agent, employee, or receiver of such supplier, dealer or user, shall be guilty of a felony and upon conviction, shall be punished by confinement in the State penitentiary for not more than five (5) years or by confinement in the county jail for not less than one (1) month nor more than six (6) months, or by a fine of not less than One Hundred Dollars (\$100) nor more than Five Thousand Dollars (\$5,000) or by both such fine and imprisonment.

In addition to the foregoing penalties, a felony conviction for any of the above-named offenses shall automatically forfeit the right of said convicted person to obtain a permit as a supplier, dealer or user for a period of two (2) years from the date final judgment is entered.

If the penalties prescribed elsewhere in this Chapter overlap as to offenses punishable under Article 10.24 of this Chapter, then the penalties prescribed by the said Article 10.24 shall control over all such penalties except the penalties prescribed in Article 10.23 of this Chapter. Venue of prosecution under Article 10.24 shall be in Travis County, Texas, or in the county in which the offense occurred.

#### **Art. 10.25 Misdemeanor Penalties**

(1) If any person shall violate, or fail or refuse to comply with any provision of this Chapter for which no penalty is provided in Article 10.23 or Article 10.24 of this Chapter, he shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200).

(2) If any person shall violate, or fail or refuse to comply with any rule and regulation duly promulgated by the Comptroller under provisions of this Chapter he shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200).

CHAPTER 11

MISCELLANEOUS TAXES BASED ON GROSS RECEIPTS

**Art.**

- 11.01 Express Companies
- 11.02 Telegraph Companies
- 11.03 Gas, Electric Light, Power or Water Works
- 11.04 Car Companies
- 11.05 Sleeping, Palace or Dining Car Companies
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- 11.07 Tax Paid When Business is Begun After Beginning of Quarter
- 11.08 Additional Reports
- 11.09 Penalties
- 11.10 Penalty for Failure to Report
- 11.11 Penalty for Failure to Pay Tax

**Art. 11.01 Express Companies**

Each individual, company, association or corporation doing an express business by steam railroad or by water in this State shall make, quarterly, on the first days of January, April, July and October of each year, a report to the Comptroller, under oath of the individual or of the president, treasurer or superintendent of such company, association or corporation, showing the gross amount received from intrastate business done within this State in the payment of charges from express and freights, or from other sources of revenues received from intrastate business during the quarter next preceding. Said individuals, companies, associations or corporations, at the time of making said report, shall pay the State Treasurer an occupation tax for the quarter beginning on said date equal to two and one half per cent (2½%) of said gross receipts, as shown by said report.

**Art. 11.02 Telegraph Companies**

(1) Each individual, company, corporation, or association owning, operating, managing or controlling any telegraph lines in this State, or owning, operating, controlling or managing what is known as wireless telegraph stations, for the transmission of messages or aerograms, and charging for the transmission of such messages or aerograms, shall make quarterly, on the first days of January, April, July and October of each year, a report to the Comptroller, under oath of the individual, or of the president, treasurer, or superintendent of such company, corporation, or association, showing the gross amount received from all business within this State during the preceding quarter, in the payment of telegraph or aerogram charges, including the amount received on full rate messages and aerograms, and half rate messages and aerograms, and from the lease or use of any wires or equipment within the State during said quarter, excepting all business transacted for and on behalf of the agencies of the United States Government, for which rates are prescribed by the Postmaster General. Said individuals, companies, corporations, and associations, at the time of making said report, shall pay to the State Treasurer, and there is hereby levied upon said individuals, companies, corporations, and associations, an occupation tax for the quarter beginning on said date, equal to one and one half per cent (1½%) of the gross receipts, as shown by said report, received from doing business

outside of incorporated cities and towns and within incorporated cities and towns of less than two thousand, five hundred (2,500) inhabitants according to the last preceding Federal census; an occupation tax for the quarter beginning on said date, equal to one and three fourths per cent ( $1\frac{3}{4}\%$ ) of said gross receipts, as shown by said report, received from doing business within incorporated cities and towns of more than two thousand, five hundred (2,500) inhabitants and not more than ten thousand (10,000) inhabitants according to the last preceding Federal census; an occupation tax for the quarter beginning on said date, equal to two and two hundred seventy-five thousandths per cent (2.275%) of said gross receipts, as shown by said report, received from doing business within incorporated cities and towns of more than ten thousand (10,000) inhabitants according to the last preceding Federal census.

(2) No city or other political subdivision of this State, by virtue of its taxing power, police power or otherwise shall impose an occupation tax or charge of any sort for the privilege of doing business upon any person, corporation or association required to pay an occupation tax under this Article, provided that nothing in this Article shall be construed to prohibit the collection of any tax now imposed by a franchise, and provided further that this Article shall not affect any contracts now in existence or hereafter made between a city and the holder of a franchise.

#### Art. 11.03 Gas, Electric Light, Power or Water Works

(1) Each individual, company, corporation, or association owning, operating, managing or controlling any gas, electric light, electric power, or water works, or water and light plant, located within any incorporated town or city in this State, and used for local sale and distribution in said town or city, and charging for such gas, electric lights, electric power, or water, shall make quarterly, on the first day of January, April, July, and October of each year, a report to the Comptroller under oath of the individual, or of the president, treasurer or superintendent of such company, or corporation, or association, showing the gross amount received from such business done in each such incorporated city or town within this State in the payment of charges for such gas, electric lights, electric power, or water for the quarter next preceding. Said individual, company, corporation, or association, at the time of making said report for any such incorporated town or city of more than one thousand (1,000) inhabitants and less than two thousand, five hundred (2,500) inhabitants, according to the last Federal Census next preceding the filing of said report, shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date equal to .581% of said gross receipts, as shown by said report; and for any incorporated town or city of more than two thousand, five hundred (2,500) inhabitants and less than ten thousand (10,000) inhabitants, according to the last Federal Census next preceding the filing of said report, the said individual, company, corporation, or association at the time of making said report shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date an amount equal to 1.07% of said gross receipts, as shown by said report; and for any incorporated town or city of ten thousand (10,000) inhabitants or more, according to the last Federal census next preceding the filing of said report, the said individual, company, corporation, or association, at the time of making said report, shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date an amount equal to 1.997% of said gross receipts, as shown by said report. Nothing herein shall apply to any such gas,

electric light, power or water works, or water and light plant, within this State, owned and operated by any city or town, nor to any county or water improvement or conservation district.

(2) Nothing herein shall be construed to require payment of the tax on gross receipts herein levied more than once on the same commodity, and where the commodity is produced by one individual, company, corporation, or association, and distributed by another, the tax shall be paid by the distributor alone.

(3) No city or other political subdivision of this State, by virtue of its taxing power, proprietary power, police power or otherwise, shall impose an occupation tax or charge of any sort upon any person, corporation, or association required to pay an occupation tax under this Article. Nothing in this Article shall be construed as affecting in any way the collection of ad valorem taxes authorized by law; nor impairing or altering in any way the provisions of any contracts, agreements, or franchises now in existence, or hereafter made between a city and a public utility, relating to payments of any sort to a city. Nothing in this Article shall be construed as prohibiting an incorporated city or town from making a reasonable charge, otherwise lawful, for the use of its streets, alleys, and public ways by a public utility in the conduct of its business, and each such city shall have such right and power; but any such charges, whether designated as rentals or otherwise, and whether measured by gross receipts, units of installation, or in any manner, shall not in the aggregate exceed the equivalent of two per cent (2%) of the gross receipts of such utility within such municipality derived from the sale of gas, electric energy, or water. Any special taxes, rentals, contributions, or charges accruing after the effective date of this Act, under the terms of any pre-existing contract or franchise, against any utility paying an occupation tax under this Article, when paid to any such city, shall be credited on the amount owed by such public utility on any charge or rental imposed for the use of streets, alleys, and public ways, levied by ordinance, and accruing after the effective date of this Act; provided that where valid ordinances have been enacted heretofore by cities imposing a charge or rental in excess of two per cent (2%) of the gross receipts of such utilities, nothing herein shall be construed so as to prohibit the collection of such sum as may be due said cities thereunder from the date of said ordinances up to the time this Article shall become effective.

(4) And provided further that utilities paying an occupation tax under this Article shall not hereafter be required to pay the license fee imposed in Article 5a, House Bill No. 18, Chapter 400, Acts of the Forty-fourth Legislature, for the privilege of selling gas and electric appliances and parts for the repairs thereof, in towns of three thousand (3,000) or less in population according to the next preceding Federal Census.

#### **Art. 11.04 Car Companies**

Each individual, company, corporation, or association, residing without this State, or incorporated under the laws of any other state or territory, or nation, and owning stock cars, refrigerator and fruit cars of any kind, tank cars of any kind, coal cars of any kind, furniture cars or common box cars and flat cars, and leasing, renting or charging mileage for the use of such cars within the State of Texas, shall make quarterly, on the first day of January, April, July and October of each year, a report to the Comptroller under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association,

showing the amount of gross receipts from such rentals, or mileage, or from other sources of revenue received from business done within this State, during the quarter next preceding. Said individuals, companies, corporations, and associations, at the time of making said report, shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date equal to three per cent (3%) of said gross receipts as shown by said report.

#### **Art. 11.05 Sleeping, Palace or Dining Car Companies**

Every sleeping car company, palace car company, or dining car company doing business in this State, and each individual, company, corporation or association leasing or renting, owning, controlling or managing any palace cars, dining cars or sleeping cars within this State for the use of the public, for which any fare is charged, shall, on the first days of January, April, July and October of each year, report to the Comptroller, under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association, showing the amount of gross receipts earned from any and all sources whatever within this State, except from receipts derived from buffet service, during the quarter next preceding. Said individuals, companies, corporations and associations, at the time of making said report, shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date equal to five per cent (5%) of said gross receipts as shown by said report. The tax herein provided for shall be in lieu of all other taxes now levied upon sleeping car, palace car or dining car companies.

#### **Art. 11.06 Telephone Companies**

(1) Each individual, company, corporation, or association owning, operating, managing, or controlling any telephone line or lines, or any telephones within this State and charging for the use of same, shall make quarterly, on the first days of January, April, July, and October of each year, a report to the Comptroller, under oath of the individual, or of the president, treasurer, or superintendent of such company, corporation, or association, showing the gross amount received from all business within this State during the preceding quarter in the payment of charges for the use of its line or lines, telephone and telephones, and from the lease or use of any wires or equipment within this State during said quarter. Said individuals, companies, corporations, and associations, at the time of making said report, shall pay to the State Treasurer, and there is hereby levied upon said individuals, companies, corporations, and associations, an occupation tax for the quarter beginning on said date, equal to 1.65% of the gross receipts, as shown by said report, received from doing business outside of incorporated cities and towns and within incorporated cities and towns of less than two thousand, five hundred (2,500) inhabitants, according to the last preceding Federal Census; an occupation tax for the quarter beginning on said date, equal to 1.925% of said gross receipts, as shown by said report, received from doing business within incorporated cities and towns of more than two thousand, five hundred (2,500) inhabitants, and not more than ten thousand (10,000) inhabitants, according to the last preceding Federal Census; an occupation tax for the quarter beginning on said date, equal to 2.5025% of said gross receipts, as shown by said report, received from doing business within incorporated cities and towns of more than ten thousand (10,000) inhabitants, according to the last preceding Federal Census. Nothing herein shall apply to any telephone line or lines owned and operated by a cooperative, nonprofit, membership corporation.

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

(2) No city or other political subdivision of this State, by virtue of its taxing power, police power, or otherwise, shall impose an occupation tax or charge of any sort, for the privilege of doing business, upon any person, corporation, or association required to pay an occupation tax under this Article; provided, that nothing in this Article shall be construed to prohibit the collection of ad valorem taxes as provided or not prohibited by law, or any tax now imposed by franchise, and provided further that this Article shall not affect any contract now in existence or hereafter made between a city and the holder of a franchise.

#### **Art. 11.07 Tax Paid When Business is Begun After Beginning of Quarter**

If any individual, company, corporation, firm, or association, in this Chapter mentioned, shall begin and engage in any business for which there is an occupation tax herein imposed, on or after the beginning day of the quarter for which said tax is imposed, then, and in all such cases, the amount of such tax for said beginning quarter shall be and is hereby fixed at the sum of Fifty Dollars (\$50), payable to the State Treasurer in advance; but for the next succeeding quarter, and all other succeeding quarters, the tax shall be determined by reports to the Comptroller of the business for the preceding quarter, or part thereof, as herein otherwise in this Chapter provided; and reports and payments of such tax shall be made subject to all other provisions of this Chapter.

#### **Art. 11.08 Additional Reports**

If for any reason the Comptroller is not satisfied with any report from any such person, company, corporation, copartnership or association, he may require additional or supplemental reports containing information and data upon such matters as he may need or deem necessary to ascertain the true and correct amount of all taxes due by any such person, firm or corporation. Every statement or report required by this Chapter shall have affixed thereto the affidavit of the president, vice-president, secretary or treasurer of the person, corporation, copartnership or association, or one (1) of the persons or members of the partnership making the same, to the effect that the statement is true. The Comptroller shall prepare blanks to be used in making the reports required by this Chapter.

#### **Art. 11.09 Penalties**

Any person, company, firm, partnership, corporation, unincorporated company or association, transacting business in this State upon which a gross receipts tax is required by law to be paid without having first obtained a permit to do so when required by law or transacting such business after its permit to do so has been suspended, as provided by this law, shall be liable to a penalty of not less than Fifty Dollars (\$50) nor more than Five Hundred Dollars (\$500) daily for each day's business which is transacted in violation of this law. The Attorney General shall bring suits for all penalties authorized by this law, and the courts of Travis County shall have concurrent jurisdiction over all violations of this law.

#### **Art. 11.10 Penalty for Failure to Report**

Any person, company, corporation or association, or any receiver or receivers, failing to make report for thirty (30) days from the date when said report is required by this Chapter to be made, shall forfeit and pay

to the State of Texas a penalty of not exceeding One Thousand Dollars (\$1,000).

**Art. 11.11 Penalty for Failure to Pay Tax**

Any person, company, corporation or association, or any receiver or receivers, failing to pay any tax for thirty (30) days from the date when said tax is required by this Chapter to be paid, shall forfeit and pay to the State of Texas a penalty of ten per cent (10%) upon the amount of such tax.

## CHAPTER 12

## FRANCHISE TAX

**Art.**

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**Art. 12.01 Base and Rate of Tax**

(1) Except as herein provided, every domestic and foreign corporation heretofore or hereafter chartered or authorized to do business in Texas or doing business in Texas, shall, on or before May 1st of each year, pay in advance to the Secretary of State a franchise tax for the year following which shall be based on whichever of the following shall yield the greatest tax:

(a) Two Dollars and Twenty-five Cents (\$2.25) per One Thousand Dollars (\$1,000) or fractional part thereof applied to that portion of the sum of the stated capital, surplus and undivided profits, and outstanding bonds, notes and debentures, the sum of which for the purposes of this Chapter is hereafter referred to as "taxable capital," allocable to Texas in accordance with Article 12.02 of this Chapter.

As used in this Chapter, the phrase "stated capital" shall have the same meaning as defined in Article 1.02 of the Texas Business Corporation Act.

For the purpose of this subsection outstanding bonds, notes and debentures shall include all written evidences of indebtedness which bear a maturity date of one (1) year or more from date of issue, and all such instruments which bear a maturity date of less than one (1) year from date of issue which represent indebtedness which has remained continuously outstanding for a period of one (1) year or more from date of inception whether or not said indebtedness has been renewed or extended by the issuance of other evidences of the same indebtedness to the same or other parties, and it is further provided that this term shall not include instruments which have been previously classified as surplus.

(b) Two Dollars and Twenty-five Cents (\$2.25) per One Thousand Dollars (\$1,000) or fractional part thereof applied to the assessed value for County ad valorem tax purposes of the property owned by the corporation in this State.

(c) Twenty-five Dollars (\$25.00).

(2) Corporations, other than those enjoying the use of public highways by virtue of a certificate of public convenience and necessity granted by the Railroad Commission of Texas, which are required by law to pay annually a tax upon intangible assets, and corporations incorporated only for the purpose of owning or operating street railways or passenger bus systems in any city or town and suburbs thereof, and corporations incorporated only for the purpose of maintaining or owning or operating electric interurban railways, and corporations, four-fifths ( $\frac{4}{5}$ ) or more of whose assets are invested in, and four-fifths ( $\frac{4}{5}$ ) or more of whose gross income is received from, voting common capital stock which comprises four-fifths ( $\frac{4}{5}$ ) or more of the total fully voting common capital stock of one or more corporations which are public utility corporations under clause (3) hereof, shall be required hereafter to pay a franchise tax equal to one-fifth ( $\frac{1}{5}$ ) of the franchise tax herein imposed against all other corporations under subsections (1)a or (1)b, but not less than the entire tax imposed by subsection (1)c of this Article.

(3) Except as provided in preceding subsection (2), all public utility corporations, which shall include any such corporation engaged solely in the business of a public utility as defined by the laws of Texas whose rates or services are regulated, or subject to a regulation in whole or in part, by law, shall pay a franchise tax as provided in this Article which shall be based on whichever of the following shall yield the greatest tax:

(a) Two Dollars and Twenty-five Cents (\$2.25) per One Thousand Dollars (\$1,000) or fractional part thereof applied to that portion of the stated capital, surplus and undivided profits, allocable to Texas in accordance with Article 12.02 of this Chapter.

(b) Two Dollars and Twenty-five Cents (\$2.25) per One Thousand Dollars (\$1,000) or fractional part thereof applied to the assessed value for County ad valorem tax purposes of the property owned by the corporation in this State.

(c) Twenty-five Dollars (\$25.00).

(4) Corporations engaged partly in the business of a public utility as defined in Subsection (3) of this Article and partly in business embraced in Subsection (1) of this Article shall pay the franchise tax in the following manner: as to those businesses which come under Subsection (1) the tax shall be computed as provided in Subsection (1) on that proportion of the entire taxable capital under said Subsection (1) as the Texas gross receipts from such business or businesses bear to the entire Texas gross



receipts of such corporation; and to those businesses which come under subsection (3) the tax shall be computed as provided in Subsection (3) on that proportion of the entire taxable capital under said Subsection (3) as the Texas gross receipts from such business or businesses bear to the entire Texas gross receipts of such corporation. The period for which such gross receipts are taken shall be for the same period used in computing taxable capital allocable to Texas in accordance with Article 12.02 of this Chapter.

(5) A corporation now required to pay a separate franchise tax for each purpose or business authorized by its charter shall hereafter pay only the tax provided hereunder for one purpose, and, until said corporation adopts the provisions of the Texas Business Corporation Act, it shall, in addition, pay one-fourth ( $\frac{1}{4}$ ) of such amount for each additional purpose named in its charter; provided, however, this Article shall not apply to corporations organized under the Electric Co-operative Corporation Act. Provided further, that this Article does not amend, alter, or change in anywise any provisions of Chapter 86, page 163, Forty-fifth Legislature, Acts, 1937, and provided further that nothing in this Article shall repeal any total exemption from franchise taxes now provided by law.

#### Art. 12.02 Allocation Formula

Each corporation liable for payment of a franchise tax shall determine the portion of its entire taxable capital taxable by the State of Texas by multiplying same by an allocation percentage which shall be the percentage relationship which the gross receipts from its business done in Texas bear to the total gross receipts of the corporation from its entire business.

For the purpose of this Article, the term "gross receipts from its business done in Texas" shall include:

(a) Sales of tangible personal property located within Texas at the time of the receipt of or appropriation to the orders where shipment is made to points within this State,

(b) Services performed within Texas,

(c) Rentals from property situated, and royalties from the use of patents or copyrights, within Texas, and

(d) All other business receipts within Texas.

For the purpose of this Article, the term "total gross receipts of the corporation from its entire business" shall include all of the proceeds of all sales of the corporation's tangible personal property, all receipts from services, all rentals, all royalties and all other business receipts, whether within or outside of Texas.

#### Art. 12.03 Corporations exempt

The franchise tax imposed by this Chapter shall not apply to any insurance company, surety, guaranty or fidelity company, transportation company or sleeping, palace car and dining car company now required to pay an annual tax measured by their gross receipts, or to any corporation organized as a railway terminal corporation and having no annual net income from the business done by it, or to corporations having no capital stock and organized for the exclusive purpose of promoting the public interest of any county, city, or town, or other area within the State or to corporations organized for the purpose of religious worship or for providing places of burial not for private profit, or to corporations organized for the purpose of holding agricultural fairs and encouraging agri-

cultural pursuits, or for strictly educational purposes, or for purely public charity, or to state-chartered building and loan associations; or to any mutual investment company registered under the Federal Investment Company Act of 1940, as from time to time amended, which holds stocks, bonds or other securities of other companies solely for mutual investment purposes or for nonprofit corporations having no capital stock organized for the purpose of the education of the public in the protection and conservation of fish, game and other wildlife, grass lands and forests.

#### **Art. 12.04 Foreign corporations may withdraw**

Should any foreign corporation which has or may hereafter obtain a permit to do business within this State desire at any time to withdraw from doing business within this State, it may surrender such permit to the Secretary of State who shall mark or stamp such permit "surrendered," dating and signing the same officially, and shall endorse upon the record of such permit in his office the word "surrendered" and the date thereof; provided, however, that prior to the surrender of such permit such corporations shall have paid in full all franchise taxes and penalties owed by such corporation to the State of Texas. The Secretary of State shall not issue any permit to do business in this State to any foreign corporation which has forfeited its right to do business in this State, as provided for in this Chapter, prior to having surrendered its permit, unless such corporation shall pay to the Secretary of State at the time of the filing of its application for a new permit to do business within this State the amount of money which would have been due to the State of Texas as a revival fee as provided for in this Chapter for relieving such corporation from the forfeiture of its right to do business in Texas up to the date of the surrender of its permit.

#### **Art. 12.05 Closed State Bank**

No franchise tax shall be assessed against a State Bank after it has closed its doors and has gone into the hands of the Banking Commissioner for liquidation according to law, nor shall any such corporation be liable for any franchise tax while in the hands of the Commissioner for liquidation. The failure of the Commissioner to pay franchise taxes for any bank in his hands for liquidation shall not operate to revoke or forfeit the charter of such corporation.

Provided, that after such liquidation should there be any funds left that would go to the stockholders, then all past due franchise taxes and penalties shall be paid before distributing such funds, if any, to outstanding stockholders.

Provided further, that the Banking Commission of Texas shall not be required to file with the Secretary of State any reports for the purpose of assessing franchise taxes.

#### **Art. 12.06 Initial Tax to be Paid**

(1) Whenever a private domestic corporation is chartered in this State or whenever a foreign corporation applying for a permit has theretofore done no business in Texas, its initial tax shall be payable within ninety (90) days after the expiration of one (1) year from the date of the filing of such charter or the granting of such permit, as the case may be, at which time the tax shall be computed according to its first year's business as prescribed by this Chapter and at the same time, such corporation shall also pay its tax in advance, based upon the first year's business,

for the period from the end of the first year to and including April 30th following.

Where such corporation's first year from the filing of its charter or from the granting of its permit ends between January first and May first, there shall also be computed and paid an additional year's tax for the year beginning May first following the end of the first year as above defined, which tax shall be computed from the data contained in the first report filed by such corporation.

(2) Whenever a foreign corporation applying for a permit has theretofore done no business in Texas, such corporation at the time of filing its application for such permit with the Secretary of State shall deposit with the Secretary of State the sum of Five Hundred Dollars (\$500) which sum shall be deposited by the Secretary of State in a trust fund to be held by the Secretary of State during the time such foreign corporation is engaged in doing business in this State and shall pay all filing fees and franchise taxes which may be due by such foreign corporation according to the provisions of this Chapter, provided, however, that should the right of said corporation to do business in this State be forfeited or its permit forfeited as provided in this Chapter, the Secretary of State shall apply said sum or any part thereof so deposited, to the payment of all fees and franchise taxes and penalties which may become due by such corporation to the State of Texas. After such corporation has ceased to do business in this State, either by the surrender or the forfeiture of its permit as provided by the laws of the State of Texas, such deposit or the balance thereof, if any, shall be paid by the Secretary of State to the legal agent, designated in conformity with Article 12.11 of this Chapter, of such foreign corporation in this State.

(3) Any foreign corporation applying for a permit to do business in this State, at its option and in lieu of the deposit required under Subsection (2) of this Article, may make, execute, and deliver to the Secretary of State its bond payable to the Secretary of State in the principal amount of such required deposit with a corporate surety chartered by this State or holding a permit authorizing it to do business in this State conditioned upon the payment when due of all fees and/or franchise taxes to become due and owing to the State of Texas under the provisions of this Chapter, which bond shall be maintained in full force and effect as long as such corporation shall be engaged in business in the State of Texas and for a period of one (1) year thereafter. Should such corporation forfeit its right to do business as provided in this Chapter the Attorney General shall bring suit upon such bond in a court of competent jurisdiction in Travis County, Texas, against the surety or sureties thereon for the amount of such delinquent fees, franchise taxes, and penalties due and owing the State of Texas, provided, that such suit shall be in addition to and cumulative of all other remedies provided by this Chapter.

#### **Art. 12.07 Secretary of State May Require Initial Reports**

To determine the amount of any franchise tax payment required by this Chapter of any domestic corporation which may be hereafter chartered, or of any foreign corporation which may hereafter apply for a permit to do business within this State, and also to determine the correctness of any report which is provided for in this Chapter, the Secretary of State may, whenever he deems it necessary or proper to protect the interests of the State, require any one (1) or more of the officers of such corporations to make and file in the office of the Secretary of State an affidavit setting forth fully the facts concerning the amount of the surplus and undivided profits and outstanding evidences of indebtedness respec-

tively, if any, of such domestic or foreign corporation; and until the Secretary of State shall be fully satisfied as to the amount of such surplus and undivided profits, respectively, if any, he shall not file the articles of incorporation of such proposed domestic corporation, or issue such permit, or accept such franchise tax.

#### **Art. 12.08 Report of Corporation**

(1) Except as herein provided all corporations required to pay an annual franchise tax shall, between January first and March fifteenth of each year, make a sworn report, in duplicate, to the Secretary of State, on forms furnished by that officer, showing the condition of such corporation on the last day of the corporation's preceding fiscal year. The Secretary of State may for good cause shown by any corporation extend such time to any date up to May first. Said report shall give the cash value of all gross assets of the corporation, the amount of its authorized capital stock actually subscribed, and the amount paid in, the surplus and undivided profits or deficit, if any, the amount of mortgage, bonded and current indebtedness, the amount and date of payment of the last annual, semiannual, quarterly, or monthly dividend, the assessed value, for county ad valorem tax purposes of all property of the corporation, real, personal or mixed, owned by the corporation in this State and the county in which assessed for such purposes, the amount of all taxes paid, or due and payable to the State of Texas, or to any county, city or town, school district, road district, or other taxing subdivision of Texas for the preceding tax year.

(2) The report shall also contain any other information concerning the corporation that the Secretary of State shall direct.

#### **Art. 12.09 Initial Reports, Penalty for Late Filing**

Where a domestic corporation is chartered in this State or where a foreign corporation which has heretofore done no business in this State and is granted a permit to do business in Texas it shall file its first report within ninety (90) days from the expiration of one (1) year from the date such charter was filed or permit was granted, as the case may be, showing its condition as of the end of the month nearest the end of such first year.

Any corporation which shall fail or refuse to make its report or reports required by Articles 12.08 and 12.09 when due shall be assessed a penalty of five per cent (5%) of the amount of franchise tax due which shall be payable to the Secretary of State, together with its franchise tax.

#### **Art. 12.10 Reports Confidential**

Reports made under Articles 12.08 (or 12.08 and 12.09) shall be privileged and not for the inspection of the general public, but a bona fide stockholder owning one (1) or more shares of the outstanding stock of any corporation may examine such reports upon presentation of evidence of such ownership to the Secretary of State. No other examination, disclosure or use shall be permitted of the reports except in the course of some judicial proceedings in which the State or any bona fide stockholder 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, including the Comptroller of Public Accounts, the State Auditor and the State Tax Commissioner; provided that the Secretary of State may in his discretion for good cause shown

disclose to any interested person the names of the officers and directors and agents for service and the principal office and place of business of any corporation filing a franchise tax report.

**Art. 12.11 Reports Sworn To; Agents for Service**

Each report of any corporation shall be sworn to by either the president, vice-president, secretary, treasurer or general manager, and shall give the name and address of each officer and director. To provide a means for service of process to collect any franchise tax or penalties or for other purposes each corporation, foreign or domestic, shall designate some person residing in this State as an authorized agent for service of process. The person designated and his address shall be given in every report.

**Art. 12.12 Authority of Secretary of State, Rules and Regulations**

All forms for reports to the Secretary of State required by this Chapter shall contain such information as the Secretary of State may require. He shall have authority to make and publish rules and regulations not inconsistent with the Constitution or laws of this State or of the United States for the enforcement of this Chapter. The Secretary of State may require any corporation to furnish such additional information from its books and records as may be necessary in determining the amount of taxes that may be due hereunder. The Secretary of State or his authorized representative, or the State Auditor or his authorized representative, shall have full and complete authority to investigate and inquire into and examine the books and records of any such corporation for the purpose of ascertaining the correctness of its franchise tax liability.

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 Secretary of State, or his authorized representative, or the State Auditor or his authorized representative, to examine its books and records, whether the same be situated within this State 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 cancelled or forfeited.

**Art. 12.13 Lien for Taxes and Penalties**

The State shall have a prior lien on all corporate property for all franchise taxes and penalties. At any time after any corporation, domestic or foreign, shall have its right to do business forfeited as provided in this Chapter, the Secretary of State shall file and record with the Clerk of the County wherein the principal place of business of said corporation is located as shown by its Articles of Incorporation or amendments thereto, or the permit of said corporation, a notice of the taxes and penalties accruing under this Chapter and the liens securing the same on a form prepared or approved by the Attorney General of the State of Texas, showing the name of the corporation owing such taxes and penalties, including the franchise taxes then due and owing and calling attention to the possible additional taxes and penalties which might accrue in the future under the terms of this Chapter; and the County Clerk of such county is hereby authorized to and shall file, record and index such notice provided for both as a chattel mortgage and as a mortgage on real estate in accordance with the Statutes in such cases made and provided. When such notice has been filed, recorded and indexed, the same shall be and constitute notice to all parties dealing with the real and personal

property of such corporation wherever situated, of the taxes and penalties then accrued and to accrue in the future and of the liens herein granted the State of Texas. The Secretary of State shall also file and record with the clerk of any county in which he has reason to believe any corporation owing franchise taxes and penalties has real or personal property, a copy of said notice and it shall be the duty of the County Clerk of such county to file, record and index such notice in manner and form hereinbefore provided, and when the same has been so filed, recorded and indexed, such notice shall be and constitute additional notice to all parties dealing with the real and personal property of such corporation in said county of such taxes and penalties and the liens granted the State of Texas. The Secretary of State is hereby authorized to execute and deliver (1) complete releases of the liens herein provided for on payment in full of the taxes and penalties, and (2) partial releases releasing particular property upon payment of such sum as the Secretary of State may deem adequate and proper under all circumstances. Such releases shall be on a form prepared or approved by the Attorney General of the State of Texas. No suit in any event shall be brought or instituted for the enforcement of the liens granted the State of Texas by this Chapter unless the same shall be instituted within two (2) years from and after the time the corporation owing such taxes and penalties shall forfeit its right to do business in this State under the provisions of this Chapter; provided, however, that nothing in this Act contained shall prevent the State of Texas from collecting or enforcing by suit or attachment at any time said franchise taxes and penalties due from the corporation owing the same.

#### **Art. 12.14 Failure to Pay Tax**

Any corporation, either domestic or foreign which shall fail to pay any franchise tax provided for in this Chapter when the same shall become due and payable under the provisions of this Chapter, shall thereupon become liable to a penalty of ten per cent (10%) of the amount of such franchise tax due by such corporation. If the reports required by Articles 12.08 and 12.09 be not filed in accordance with the provisions of this Chapter, or if the amount of such tax and penalties be not paid in full on or before the thirtieth day after notice of delinquency is mailed to such corporation, such corporation shall for such default forfeit its right to do business in this State; which 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 do business forfeited" and the date of such forfeiture. Any corporation whose right to do business shall be thus forfeited shall be denied the right to sue or defend in any court of this State, except in a suit to forfeit the charter or permit of such corporation. In any suit against such corporation on a cause of action arising before such forfeiture, no affirmative relief shall be granted to such corporation, unless its right to do business in this State shall be revived as provided in this Chapter. Each director and officer of any corporation whose right to do business within this State shall be so forfeited shall, as to any and all debts of such corporation, which shall include all franchise taxes and penalties thereon which shall become due and payable subsequent to the date of such forfeiture, and which may be created or incurred, with his knowledge, approval and consent, within this State, after such forfeiture by any such directors or officers, and before the revival of the right of such corporation to do business, be deemed and held liable thereon in the same manner and to the same extent as if such directors and officers of such corporations were partners.

**Art. 12.15 Notice of Forfeiture**

The Secretary of State shall notify each domestic and foreign corporation which may be or become subject to a franchise tax under the laws of this State, which has failed to file such report or pay franchise tax on or before the first day of May, that unless such overdue report is filed or such overdue tax together with said penalties thereon shall be paid within thirty (30) days of the mailing of such notice, the right of such corporation to do business in this State will be forfeited without judicial ascertainment. Such notice may be either written or printed and shall be verified by the seal of the office of the Secretary of State, and shall be addressed to such corporation and mailed to the post office named in its articles of incorporation as its principal place of business, or to any other known place of business of such corporation. A record of the date of mailing such notice shall be kept in the office of the Secretary of State, and such notice and record thereof shall constitute legal and sufficient notice thereof for all purposes of this Chapter. Any corporation whose right to do business may have been forfeited, as provided in this Chapter, shall be relieved from such forfeiture by paying to the Secretary of State at any time prior to the forfeiture of the charter or permit of such a corporation as hereinafter provided, the full amount of the franchise taxes and penalties due by it, together with an additional amount of five per cent (5%) of such taxes for each month, or fractional part of a month, which shall elapse after such forfeiture as a revival fee; provided, that such amount shall in no case be less than Five Dollars (\$5). When such taxes and penalties and the revival fee shall be paid to the Secretary of State, he shall revive the right of the corporation to do business within the State by cancelling the words "right to do business forfeited," upon his record and endorsing thereon the word "revived," and the date of such revival. If any domestic corporation or foreign corporation, whose right to do business within this State shall hereafter be forfeited under the provisions of this Chapter, shall fail to pay the Secretary of State within one hundred and twenty (120) days after such forfeiture, the amount necessary to entitle it to have its right to do business revived under the provisions of this Chapter, such failure shall constitute sufficient ground for the forfeiture, by judgment of any court of competent jurisdiction, of the charter of such domestic corporation, or of the permit of such foreign corporation. It shall be the duty of the Secretary of State, after such one hundred and twenty (120) days next following such forfeiture, to certify to the Attorney General the names of all corporations, domestic and foreign, whose right to do business within this State shall have been forfeited as hereinbefore provided, and upon receiving such certificate the Attorney General shall forthwith institute suit against such corporations under the provisions of Article 12.16 of this Chapter.

**Art. 12.16 Attorney General to Bring Suit**

(1) The Attorney General shall bring suit therefor, against any such corporation which may be or become subject to or liable for any franchise tax or penalty under this law; and, in case there may now be or shall hereafter exist valid grounds for the forfeiture of the charter of any domestic private corporation or the permit of any foreign corporation, for failure to pay any franchise tax or franchise taxes or penalty or penalties to which it may have become or shall hereafter be or become subject or liable under this or former law, he shall bring suit for a forfeiture of such charter or permit; and, for the purpose of enforcing the provisions of this Chapter by civil suits, venue is hereby conferred upon the courts of Travis County concurrently with the courts of the county in which the

principal office of such corporation may be located as shown by its articles or amended articles of incorporation or permit. Such courts shall also have authority to restrain and enjoin a violation of any provision of this Chapter. In any case in which any court having jurisdiction thereof shall make and enter judgment forfeiting the charter or permit of any such corporation, the court may appoint a receiver thereof and may administer such receivership under the laws regulating receiverships.

(2) In all suits instituted against any domestic corporation under the provisions of this Chapter for the forfeiture of its charter and/or the recovery of franchise taxes or penalties, where the officers named in the articles of incorporation, or amendments thereto, or annual reports on file in the office of the Secretary of State, or local agent of such corporation do not reside or cannot be located in the county wherein the principal office of such corporation is located, as stated in the original articles of incorporation of said company or amendments thereto on file in the office of the Secretary of State, or where the principal office of said corporation is not maintained or cannot be found in said County, then service of process, pleadings, and other legal notices of such action may be made upon the Secretary of State of the State of Texas and the same shall be held as due and sufficient service upon such corporation. Whenever process against such corporation is served upon the Secretary of State said service may be made by delivering to the Secretary of State or to the Assistant Secretary of State, duplicate copies of such process whereupon service of such process upon such corporation shall be deemed to be complete and shall constitute valid service upon such corporation. Upon receipt of such process the Secretary of State shall forthwith forward to said corporation a copy of such process by registered mail addressed to the post office named in its Articles of Incorporation or amendments thereto as its principal place of business or to any other place of business of such corporation as shown by the records in the office of the Secretary of State; provided, however, the failure of the Secretary of State to give such notice or to mail copies of such process shall not affect the validity of said service. The certificate of the Secretary of State, under his official seal, of such service shall be competent and sufficient proof thereof. The Secretary of State shall keep a record of all processes served upon him and shall record therein the time of said service and his action in respect thereto. This Act shall be cumulative of all existing Statutes.

#### **Art. 12.17 Forfeiture of Charter**

Upon the rendition by the district court of any judgment of forfeiture under the provisions of this Chapter, the clerk of that court shall forthwith mail to the Secretary of State a certified copy of such judgment; and, upon receipt thereof, he shall endorse upon the record of such charter in his office the words, "Judgment of Forfeiture," and the date of such judgment. In the event of an appeal from such judgment by writ of error or otherwise, the clerk of the court from which such appeal is taken shall forthwith certify to the Secretary of State the fact that such appeal has been perfected, and he shall endorse upon the record of such charter in his office the word, "Appealed," and the date upon which such appeal was perfected. When final disposition of such appeal shall be made, the clerk of the court making such disposition thereof shall forthwith certify such disposition and the date thereof to the Secretary of State, who shall briefly note same upon the record of such charter in his office and the date of such final disposition.

Upon determination by the Secretary of State that any domestic corporation whose right to do business has been previously forfeited by that



officer, and which corporation has failed and refused to have its right to do business revived pursuant to the provisions of this Chapter, and which corporation fails to revive its right to do business prior to the first day of January next succeeding the date of forfeiture of its right to do business, and which corporation has no assets from which a judgment for the franchise tax, penalties, and court costs may be satisfied, and approval of such determination by the Attorney General, the charter of any such corporation may be forfeited, which forfeiture shall be consummated without judicial ascertainment by the Secretary of State entering upon the charter of such corporation filed in his office, the words, "Charter forfeited," giving the date thereof and citing this Act as authority therefor.

**Art. 12.18 Corporation in Process of Liquidation**

If a corporation is actually in process of liquidation, such corporation shall only be required to pay a franchise tax calculated upon the difference between the amount of stock actually issued and the amount of liquidating dividends actually paid upon such stock; provided, that the president and secretary of such corporation shall make affidavit as to the total amount of capital stock issued and as to the amount of liquidating dividends actually paid and that such corporation is in an actual bona fide state of liquidation.

The terms "process of liquidation" and "Actual bona fide state of liquidation" shall mean that the corporation by resolution of its board of directors, duly ratified by a majority vote of the stockholders of record thereof, has adopted and is pursuing in good faith a plan of assembling and marshalling the assets of the corporation, paying or settling with the creditors and debtors of the corporation and apportioning the remaining assets, if any, among and to the stockholders of the corporation, all in manner and form provided by the laws of Texas, thereby terminating the business of and dissolving the corporation in the manner and form provided by the laws of Texas. A copy of said plan of liquidation shall be attached to and made a part of the foregoing affidavit of the president and secretary of such corporation.

**Art. 12.19 Optional Use of Short Form Return**

(1) In lieu of the franchise tax levied by Art. 12.01 of this Chapter, any corporation which has previously paid a franchise tax in Texas under the provisions of this Chapter and whose total assets are less than One Hundred Fifty Thousand Dollars (\$150,000), may elect to pay between January 1st and May 1st of each year a franchise tax for the year following in accordance with the following schedule:

If Total Assets Are At Least	But Less Than	The Tax Shall Be
\$ 0.00	\$ 10,000.00	\$ 30.00
10,000.00	15,000.00	35.00
15,000.00	20,000.00	40.00
20,000.00	25,000.00	45.00
25,000.00	30,000.00	55.00
30,000.00	40,000.00	65.00
40,000.00	50,000.00	85.00
50,000.00	60,000.00	105.00
60,000.00	70,000.00	135.00
70,000.00	80,000.00	150.00

## If Total Assets

Are At Least	But Less Than	The Tax Shall Be
\$ 80,000.00	\$ 90,000.00	\$175.00
90,000.00	100,000.00	195.00
100,000.00	110,000.00	210.00
110,000.00	120,000.00	235.00
120,000.00	130,000.00	250.00
130,000.00	140,000.00	275.00
140,000.00	150,000.00	300.00

(2) "Total assets" as used in this Article means the total of all items reported or reportable as assets on the corporation's Federal income tax return on the last day of the corporation's reporting period for Federal income tax purposes. Said last day must fall within the twelve-month period preceding February 1st of the year in which the alternative franchise tax payable under this article is to be paid.

(3) The Secretary of State shall prescribe the form of reports to be made by any corporation electing to pay its franchise tax under the provisions of this Article. The Secretary of State may require such reports to contain any or all information required under Articles 12.08, 12.09, 12.11, or 12.12 of this Chapter.

Each report shall be sworn to by either the president, vice-president, secretary, treasurer, or general manager. There shall be submitted with the report a signed copy of the corporation's Federal income tax return for the period described in Subsection (2) of this Article. All franchise tax reports and income tax returns furnished to the Secretary of State under the provisions of this Article shall be confidential in nature and treated as such by the Secretary of State under the same conditions as provided in Article 12.10. The Secretary of State or the State Auditor may in the execution of this Article cause the books of any corporation electing to pay franchise taxes under this Article to be examined, whether such books be located within this State or any other State within the United States. The Secretary of State may make any rules or regulations necessary for the administration of this Article.

If the report of the corporation electing to pay its State franchise tax under this Article is not in accordance with the rules and regulations of the Secretary of State, the report shall be returned to the corporation. If an acceptable report is not submitted before May 1st of each year, a penalty of five per cent (5%) of the tax due, but in no case a penalty of less than Fifteen Dollars (\$15), shall be assessed and collected. Any penalties provided in this Chapter for failure to file reports required under Article 12.07 or Articles 12.08, 12.09, 12.11 or 12.12 shall also be applicable for failure to file any report required by the Secretary of State under this Article.

#### Art. 12.20 Additional Franchise Tax for the Period Ending April 30, 1960

(1) In addition to all other taxes, there is hereby levied on all corporations paying a franchise tax under the provisions of Article 7084 of the Revised Civil Statutes of Texas, 1925, as heretofore amended, for the preceding fiscal year as shown in the report required to be filed with the Secretary of State between January 1 and March 15, 1959, (or the initial or first year report required to be filed with the Secretary of State) under the provisions of Article 7089 of the Revised Civil Statutes of Texas, 1925, as then constituted, an additional franchise tax for the privilege of do-

ing business in Texas in corporate form for the period beginning on the effective date of this Act, and ending April 30, 1960.

(2) The additional franchise tax levied by this Article shall be computed by multiplying the franchise tax due and payable under the provisions of Article 7084 of the Revised Civil Statutes of Texas, 1925, as heretofore amended, by 33.33 per cent.

(3) The additional franchise tax levied by this Article shall be paid to the Secretary of State within thirty (30) days after the effective date of this Act. If any corporation fails to pay the additional tax levied by this Article within thirty (30) days after the effective date of this Act, the right of such corporation to do business in this State shall be forfeited on December 1, 1959, which 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 do business forfeited," and the date of such forfeiture, and provided further that such defaulting corporation shall be subject to the same penalties, liens and conditions as provided in this Chapter.

(4) The Secretary of State shall have the right to make and promulgate rules and regulations and to prescribe and mail forms and notices necessary for the efficient and effective administration of the additional franchise tax levied by this Article.

(5) The additional franchise tax levied by this Article shall expire on April 30, 1960.

**Art. 12.21 Additional Franchise Tax for Years Ending April 30, 1961 and April 30, 1962**

(1) In addition to the franchise tax due and payable under Article 12.01 of this Chapter, there is hereby levied on all corporations paying a franchise tax under the provisions of Article 12.01 of this Chapter an additional franchise tax for the privilege of doing business in Texas in corporate form in the periods from May 1, 1960 to and including April 30, 1961, and from May 1, 1961, to and including April 30, 1962, which additional franchise tax shall be computed by multiplying the tax due and payable under Article 12.01 of this Chapter for the aforesaid periods by 22.22 per cent.

(2) Corporations eligible to and electing to compute the franchise tax for which they are liable under the provisions of Article 12.19 of this Chapter shall, for the privilege of doing business in Texas in corporate form in the periods from May 1, 1960, to and including April 30, 1961, and from May 1, 1961, to and including April 30, 1962, pay an additional franchise tax in accordance with the following schedule:

If Total Assets		
Are At Least	But Less Than	The Additional Tax Shall Be
\$ 0.00	\$ 20,000.00	\$ 7.50
20,000.00	40,000.00	12.00
40,000.00	60,000.00	20.00
60,000.00	80,000.00	30.00
80,000.00	90,000.00	40.00
90,000.00	110,000.00	45.00
110,000.00	120,000.00	50.00
120,000.00	130,000.00	55.00
130,000.00	140,000.00	60.00
140,000.00	150,000.00	65.00

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

(3) The additional franchise tax levied by this Article shall be paid at the same time, in the same manner, and subject to the same terms, penalties and conditions as the franchise tax that will become due and payable in the same periods under the provisions of this Chapter.

(4) The Secretary of State shall have the right to make and promulgate such rules and regulations and to prescribe such forms as he deems necessary for the efficient and effective administration of the additional franchise tax levied by this Article.

(5) The additional franchise tax levied by this Article shall be cumulative of all other taxes imposed by this State.

(6) The additional franchise tax levied by this Article shall expire on April 30, 1962.

#### **Art. 12.22 Transfer of Administration**

When administration of the franchise tax is transferred from the Secretary of State to the Comptroller of Public Accounts in accordance with Acts of the Fifty-sixth Legislature, Regular Session, 1959, Chapter 325, all administrative powers and duties incident to collection and administration of the franchise tax conferred upon the Secretary of State by this Chapter shall devolve upon and be exercised by the State Comptroller of Public Accounts.

### CHAPTER 13

#### TAX ON COIN-OPERATED MACHINES

##### **Art.**

- 13.01 Definitions
- 13.02 Amount of Tax
- 13.03 Exemptions from Tax
- 13.04 Public Nuisance
- 13.05 Injunction; Venue; Payment of Tax as Condition Precedent; Records and Reports
- 13.06 Attachment of License or Permit to Machine
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- 13.15 Sealing of Machines by City or County
- 13.16 Taxes, Penalties and Interest under Re-enacted or Repealed Statutes; Offenses and Penalties under Prior Laws

##### **Art. 13.01 Definitions**

The following words, terms and phrases as used in this Chapter are defined as follows:

(1) The term "owner" means any person, individual, firm, company, association or corporation owning or having the care, control, management or possession of any "coin-operated machine" in this State.

(2) The term "operator" means any person, firm, company, association or corporation who exhibits, displays or permits to be exhibited or displayed, in his or its place of business or upon premises under his or its control, any "coin-operated machine" in this State.

(3) The term "coin-operated machine" means every machine or device of any kind or character which is operated by or with coins, or metal slugs, tokens or checks, "music coin-operated machines" and "skill or pleasure coin-operated machines" as those terms are hereinafter defined, shall be included in such terms.

(4) The term "music coin-operated machine" means every coin-operated machine of any kind or character, which dispenses or vends or which is used or operated for dispensing or vending music and which is operated by or with coins or metal slugs, tokens or checks. The following are expressly included within said term: phonographs, pianos, graphophones, radios, and all other coin-operated machines which dispense or vend music.

(5) The term "skill or pleasure coin-operated machines" means every coin-operated machine of any kind or character whatsoever, when such machine or machines dispense or are used or are capable of being used or operated for amusement or pleasure or when such machines are operated for the purpose of dispensing or affording skill or pleasure, or for any other purpose other than the dispensing or vending of "merchandise or music" or "service" exclusively, as those terms are defined in this Chapter. The following are expressly included within said term: marble machines, marble table machines, marble shooting machines, miniature race track machines, miniature football machines, miniature golf machines, miniature bowling machines, and all other coin-operated machines which dispense or afford skill or pleasure. Provided that every machine or device of any kind or character which dispenses or vends merchandise, commodities or confections or plays music in connection with or in addition to such games or dispensing of skill or pleasure shall be considered as skill or pleasure machines and taxed at the higher rate fixed for such machines.

(6) The term "service coin-operated machines" means every pay toilet, pay telephone and all other machines or devices which dispense service only and not merchandise, music, skill or pleasure.

#### Art. 13.02 Amount of Tax

(1) Every "owner" who owns, controls, possesses, exhibits, displays, or who permits to be exhibited or displayed in this State any "coin-operated machines," shall pay and there is hereby levied on every "coin-operated machine," except such as are exempted herein, an annual occupation tax determined as follows:

(a) A fee of Five Dollars (\$5) shall be paid on each "music coin-operated machine," where the coin, fee or token used, or which may be used, in the operation thereof is one of the value of Five Cents (5¢) or more, or represents a value of Five Cents (5¢) or more.

(b) A fee of Sixty Dollars (\$60) shall be paid on each "skill or pleasure coin-operated machine" where the coin, fee or token used, or which may be used, in the operation thereof is one of the value in excess of Five Cents (5¢) or represents a value in excess of Five Cents (5¢).

(c) A fee of Thirty Dollars (\$30) shall be paid on each "skill or pleasure coin-operated machine" where the coin, fee or token used, or which may be used, in the operation thereof, is one of the value in excess of One Cent (1¢) and not exceeding Five Cents (5¢) or represents a value in excess of One Cent (1¢) and not exceeding Five Cents (5¢).

(2) Provided that nothing herein shall prevent the "operator" of such machines from paying the tax levied in this Chapter for the account of the "owner" but the payment of such tax by such operator or other person shall not relieve the owner from the responsibility of complying with all provisions of this Chapter including the keeping of the records required in this Chapter.

#### **Art. 13.03 Exemptions from Tax**

Gas meters, pay telephones, pay toilets, and cigarette vending machines which are now subject to an occupation or gross receipts tax and "service coin-operated machines" as that term is defined, are expressly exempt from the tax levied herein, and the other provisions of this Chapter.

#### **Art. 13.04 Public Nuisance**

Every coin-operated machine subject to the payment of the tax levied herein, and upon which the said tax has not been paid as provided herein, is hereby declared to be a public nuisance, and may be seized and destroyed by the Comptroller of Public Accounts, his agents, or any law enforcing agency of this State as in such cases made and provided by law for the seizure and destruction of common nuisances.

#### **Art. 13.05 Injunction; Venue; Payment of Tax as Condition Precedent; Records and Reports**

(1) Any person who shall invoke the power and remedies of injunction against the Comptroller of Public Accounts of the State of Texas to restrain or enjoin him from enforcement of the collection of the tax levied herein upon any grounds for which an injunction may be issued, shall file such proceedings in a court of competent jurisdiction in Travis County, Texas, and venue for such injunction is hereby declared to be in Travis County, Texas.

(2) Before any restraining order or injunction shall be granted against the Comptroller of Public Accounts of the State of Texas to restrain or enjoin the collection of the taxes levied herein the applicant therefor shall pay into the suspense account of the State Treasury all taxes, fees, and assessments then due by him to the State and the application for restraining order or injunction shall reflect said fact of payment under oath of the applicant, his agent, or attorney. Provided that said applicant shall keep for the inspection at all times of the Attorney General and the Comptroller of Public Accounts of this State or their authorized representatives, a well-bound book record, showing all coin-operated vending machines possessed and in operation during the pendency of such restraining order or injunction. Such book record shall show the make and kind of machine, the serial number, the date such machine was put in operation, and the location and serial number of each and every machine possessed or operated within the State. Provided further that said applicant shall make and file with the Comptroller of Public Accounts daily, excluding Sundays and legal holidays, a report on a form to be prescribed by said Comptroller, showing the ownership, make and kind, and the serial number of every such machine operated by said applicant within this State. Said report shall also show the county, city, and location within the city and county of each machine and the date such machine was placed in operation. In the event the location or ownership of any machine is changed such information shall be included in said report. Said application and temporary injunction or restraining order shall be immediately dismissed and dissolved after hearing if said applicant fails, at any time before the case

shall have been finally disposed of by the court of last resort, to keep the records or make and file the reports required herein or to pay daily, excluding Sundays and legal holidays, into the suspense account of the Treasurer all taxes, fees and assessments due and thereafter becoming due, and such taxes shall be paid before such machines are operated, exhibited or displayed for operation within this State. The Comptroller of Public Accounts of this State, or his authorized representatives, may file in the court granting such injunction an affidavit that said applicant has failed to comply with the provisions of this Chapter or has violated the same. Upon the filing of said affidavit, the clerk of said court shall issue notice to the said applicant to appear before such court upon the date named therein, which shall be within five (5) days from service of such notice or as soon thereafter as the court can hear the same, to show cause why such injunction should not be dismissed, which notice shall be served by the sheriff of the county in which applicant resides or any other peace officer in this State. In the event the injunction is finally dissolved or dismissed, all taxes, fees and assessments, paid into the suspense account of the Treasurer under the provisions of this Chapter shall be paid to the funds to which such taxes, fees and assessments are allocated. If the final judgment maintains the right of applicant to a permanent injunction to prevent the collection of such taxes the funds so deposited shall be refunded by the Treasurer to said applicant.

(3) No person, firm, association or corporation required to pay the taxes levied herein to the State may receive or take advantage of any benefit of any restraining order or injunction against the Comptroller of Public Accounts, to restrain the collection of the tax levied herein except such person, firm, association or corporation as may have applied for said injunction. All other persons not securing an injunction shall pay to the Comptroller of Public Accounts all taxes, fees, and assessments due by him under the provisions of this Chapter and said restraining order or injunction shall in no way interfere with or impair the power of the Comptroller of Public Accounts of this State to collect and enforce the payment of the taxes, fees, and assessments involved in any litigation from taxpayers not parties to the restraining order or injunction. Provided further, that no court shall entertain or hear any restraining order or injunction nor shall any restraining order or injunction be granted in behalf of any class or group unless and until each and every member of such class and/or group shall have been made a party to the cause of action, and shall have paid or deposited the taxes as hereinbefore provided.

#### **Art. 13.06 Attachment of License or Permit to Machine**

Provided further, the license or permit issued by the Comptroller to evidence the payment of the tax levied herein shall be securely attached to the machine in a manner that will require continued application of steam and water to remove the same, or posted in a conspicuous place at or near the machine so as to be easily seen by the public.

#### **Art. 13.07 Rules and Regulations; Forfeitures of Licenses or Permits**

(1) The Comptroller of Public Accounts shall have the authority to make and publish rules and regulations, not inconsistent with this Chapter or the other laws or the Constitution of this State or of the United States, for the enforcement of the provisions of this Chapter and the collection of the revenues hereunder.

(2) If any individual, company, corporation or association who owns, operates, exhibits or displays any coin-operated machine in this State,

shall violate any provision of this Chapter or any rule and regulation promulgated hereunder, the Comptroller of Public Accounts shall have the power and authority to forfeit all licenses or permits issued to any of the foregoing persons by giving written notice, stating the reason justifying such forfeiture and the same shall be forfeited five (5) days from date of such notice. No new licenses or permits shall be issued within a period of one (1) year to anyone whose licenses or permits have been forfeited, except at the discretion of the Comptroller of Public Accounts. If the licenses or permits of any individual, company, corporation, or association owning, operating or displaying coin-operated machines in this State is forfeited, such individual, company, corporation, or association shall not operate, display or permit to be operated or displayed such machines until the licenses or permits are reinstated or until new licenses or permits are granted.

#### **Art. 13.08 Licenses or Permits; Collection of Tax; Payment of Expenses**

The Comptroller of Public Accounts of this State is hereby authorized, ordered and directed to collect, and issue licenses or permits for the payment of the tax levied herein and to employ all the agencies of the law available to him for the enforcement of the provisions of this Chapter. Provided that Twenty-five Thousand Dollars (\$25,000) of the funds derived under the provisions of this Chapter shall be set aside annually in a special fund subject to appropriation to the Comptroller. Any unexpended portion of said fund so specified shall at the end of each fiscal year be paid in the proper proportion to the funds to which the tax levied herein is apportioned.

#### **Art. 13.09 Existing Laws; Violations not Authorized**

Nothing herein shall be construed or have the effect to license, permit, authorize or legalize any machine, device, table, or coin-operated machine, the keeping, exhibition, operation, display or maintenance of which is now illegal or in violation of any Article of the Penal Code of this State or the Constitution of this State.

#### **Art. 13.10 Records; Forfeiture of Licenses**

Every "owner" of one or more coin-operated machines in this State shall keep for a period of two (2) years for the inspection at all times by the Attorney General and Comptroller of Public Accounts of this State, or their authorized representatives, a complete book record in a well-bound book of each and every such machine purchased, received, possessed, handled, exhibited or displayed in this State. Such record shall be kept at a permanent address which address shall be designated on the application for permit and shall include the following information: The kind of each such machine, the date acquired or received in Texas, the date placed in operation, the location or locations of each machine including county, city, street and/or rural route number, the date of each and every change in location, the name and complete address of each and every operator, the full name and address of the owner, or if other than an individual the principal officers or members thereof and their addresses. Such information shall be shown completely and separately for each and every machine. The Comptroller of Public Accounts shall be authorized and it shall be his duty to forfeit all licenses, permits of every owner failing to keep such records or failing to present such records for inspection at any time upon demand by said Comptroller of Public Accounts or his authorized representatives.



**Art. 13.11 Violations of Act; Penalty; Suit to Recover Penalty**

If any "owner" of a coin-operated machine within this State shall (a) deliver to or permit to be delivered to any "operator" a coin-operated machine without a valid license or permit issued by the Comptroller of Public Accounts of this State being attached thereto, or (b) permit any coin-operated machine under his control to be operated, exhibited or displayed within this State without said license or permit being attached thereto, or (c) if any person shall exhibit, display or have in his possession within this State any coin-operated machine without having annexed or attached thereto a license or permit issued by the Comptroller of Public Accounts of this State showing the payment of the tax due thereon for the current year, or (d) if any person required to keep records of coin-operated machines in this State shall falsify such records, or (e) shall fail to keep such records, or (f) shall refuse or fail to present such records for inspection upon the demand of the Comptroller of Public Accounts or his authorized representatives, or (g) if any person in this State shall use any artful device or deceptive practice to conceal any violation of this Chapter, or (h) mislead the Comptroller of Public Accounts or his authorized representatives in the enforcement of this Chapter, or (i) if any person in this State shall fail to comply with the provisions of this Chapter, or violate the same, or (j) if any person in this State shall fail to comply with the rules and regulations promulgated by the Comptroller of Public Accounts, or violate the same, he shall forfeit to the State as a penalty, the sum of not less than Five Dollars (\$5) nor more than Five Hundred Dollars (\$500). Each day's violation shall constitute a separate offense and incur another penalty, which, if not paid shall be recovered in a suit by the Attorney General of this State in a court of competent jurisdiction in Travis County, Texas or any court having jurisdiction.

**Art. 13.12 Offenses; Penalty**

(a) If any person shall exhibit, display or have in his possession within this State any coin-operated machine without having annexed or attached thereto a valid license or permit issued by the Comptroller of Public Accounts of this State showing the payment of the tax due thereon for the current year, or (b) if any person required to keep records of coin-operated machines in this State shall falsify such records or (c) shall fail to keep such records, or (d) shall refuse or fail to present such records for inspection upon the demand of the Comptroller of Public Accounts or his authorized representatives, or (e) if any person in this State shall use any artful device or deceptive practice to conceal any violation of this Chapter, or (f) mislead the Comptroller of Public Accounts or his authorized representatives in the enforcement of this Chapter, or (g) if any person in this State shall fail to comply with the provisions of this Chapter, or violate the same, or (h) if any person in this State shall fail to comply with the rules and regulations promulgated by the Comptroller of Public Accounts, or violate the same, he shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than Five Dollars (\$5) nor more than Two Hundred Dollars (\$200).

**Art. 13.13 Sealing Machine to Prevent Operations; Penalty for Breaking Seal**

Provided that the Comptroller of Public Accounts, or his authorized representatives, may seal any such machine upon which the tax has not been paid in a manner that will prevent further operation. Whoever shall break the seal affixed by said Comptroller or his authorized representatives, or whoever shall exhibit or display any such coin-operated machine after

said seal has been broken, or shall permit to be exhibited or displayed in his place of business any coin-operated machine after said seal has been broken or shall remove any coin-operated machine from location after the same has been sealed by the Comptroller shall be guilty of a misdemeanor and upon conviction shall be punished as set out in Article 13.12 of this Chapter. The Comptroller shall charge a fee of Five Dollars (\$5) for the release of any coin-operated machine sealed for nonpayment of tax.

**Art. 13.14 Apportionment of Tax; Tax Levy by Counties and Cities**

Except as herein provided in this Chapter, one-fourth ( $\frac{1}{4}$ ) of the net revenue derived from this Chapter shall be credited to the Available School Fund of the State of Texas and three-fourths ( $\frac{3}{4}$ ) of the net revenue derived from this Chapter shall be credited to the Clearance Fund, established by Article XX of House Bill No. 8, Chapter 184, Acts of the Forty-seventh Legislature, Regular Session, 1941. Provided that all counties and cities within this State may levy an occupation tax on coin-operated machines in this State in an amount not to exceed one half ( $\frac{1}{2}$ ) of the State tax levied herein.

**Art. 13.15 Sealing of Machines by City or County**

Any city or county levying an occupation tax on coin-operated machines is hereby authorized to seal any such machine on which the tax has not been paid. Any city or county levying an occupation tax on coin-operated machines is hereby authorized to charge a fee not exceeding Five Dollars (\$5) for the release of any machine sealed as provided herein for nonpayment of tax. Whoever shall break the seal affixed in the name of any city or county or exhibit, display or remove from location any machine on which the seal has been broken shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding Two Hundred Dollars (\$200).

**Art. 13.16 Taxes, Penalties and Interest under Re-enacted or Repealed Statutes; Offenses and Penalties under Prior Laws**

All occupation taxes, penalties and interest accruing to the State of Texas by virtue of any of the re-enacted or repealed provisions as set out in this Chapter before the effective date of this Chapter shall be and remain valid and binding obligations to the State of Texas for all taxes, penalties, and interest accruing under the provisions of prior or pre-existing laws, and all such taxes, penalties and interest now or hereafter becoming delinquent to the State of Texas before the effective date of this Chapter are hereby expressly preserved and declared to be legal and valid obligations to the State.

The passage of this Chapter shall not affect offenses committed, or prosecutions begun, under any pre-existing law, but any such offenses or prosecutions may be conducted under the law as it existed at the time of the commission of the offense.

## CHAPTER 14

## INHERITANCE TAX

## Art.

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- 14.02 Class A
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**Art. 14.01 Property Subject**

All property within the jurisdiction of this State, real or personal, corporate or incorporate, and any interest therein, including property passing under a general power of appointment exercised by the decedent by will, including the proceeds of life insurance to the extent of the amount receivable by the executor or administrator as insurance under policies taken out by the decedent upon his own life, and to the extent of the excess over Forty Thousand (\$40,000) Dollars of the amount receivable by all other beneficiaries as insurance under policies taken out by the decedent upon his own life, whether belonging to inhabitants of this State or to persons who are not inhabitants, regardless of whether such property is located within or without this State, which shall pass absolutely or in trust by will or by the laws of descent or distribution of this or any other state, or by deed, grant, sale, or gift made or intended to take effect in possession or enjoyment after the death of the grantor or donor, shall, upon passing to or for the use of any person, corporation, or association, be subject to a tax for the benefit of the State's General Revenue Fund, in accordance with the following classification; provided, however, that the tax imposed by this Chapter in respect to personal property of non-residents (other than tangible property having an actual

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

situs in this State) shall not be payable; (1) if the grantor/or donor at the time of his death was a resident of a state or territory of the United States which, at the time of his death, did not impose a transfer or inheritance tax of any character in respect of personal property of residents of this State (other than tangible personal property having an actual situs in said State); or, (2) if the laws of the State or territory of the residence of the grantor or donor at the time of his death, contained a reciprocal provision under which nonresidents were exempted from transfer or inheritance taxes of every character in respect to personal property (other than tangible personal property having an actual situs therein) provided the State or territory of residence of such nonresidents allowed a similar exemption to residents of the State or territory of residence of such a grantor or donor. For the purpose of this Chapter the District of Columbia and possessions of the United States shall be considered territories of the United States. Provided further that the provisions of this Chapter shall not apply to residents of those states which have no inheritance tax law. Any transfer made by a grantor, vendor, or donor, whether by deed, grant, sale, or gift, shall, unless shown to the contrary, be deemed to have been made in contemplation of death and subject to the same tax as herein provided, if such transfer is made within two (2) years prior to the death of the grantor, vendor, or donor, of a material part of his estate, or if the transfer made within such period is in the nature of a final distribution of property and without adequate valuable consideration.

#### **Art. 14.02 Class A**

If passing to or for the use of husband or wife, or any direct lineal descendant of husband or wife, or any direct lineal descendant or ascendant of the decedent, or to legally adopted child or children, or any direct lineal descendant of adopted child or children of the decedent, or to the husband of a daughter, or the wife of a son, the tax shall be one (1) per cent on any value in excess of Twenty-five Thousand Dollars (\$25,000) and not exceeding Fifty Thousand Dollars (\$50,000); two (2) per cent on any value in excess of Fifty Thousand Dollars (\$50,000), and not exceeding One Hundred Thousand Dollars (\$100,000); three (3) per cent on any value in excess of One Hundred Thousand Dollars (\$100,000), and not exceeding Two Hundred Thousand Dollars (\$200,000); four (4) per cent on any value in excess of Two Hundred Thousand Dollars (\$200,000), and not exceeding Five Hundred Thousand Dollars (\$500,000); five (5) per cent on any value in excess of Five Hundred Thousand Dollars (\$500,000), and not exceeding One Million Dollars (\$1,000,000); and six (6) per cent on any value in excess of One Million Dollars (\$1,000,000).

#### **Art. 14.03 Class B**

If passing to or for the use of the United States, to be used in this State, the tax shall be one per cent of any value in excess of Twenty-five Thousand Dollars, and not exceeding Fifty Thousand Dollars; two per cent on any value in excess of Fifty Thousand Dollars and not exceeding One Hundred Thousand Dollars; three per cent on any value in excess of One Hundred Thousand Dollars and not exceeding Two Hundred Thousand Dollars; four per cent on any value in excess of Two Hundred Thousand Dollars, and not exceeding Five Hundred Thousand Dollars; five per cent on any value in excess of Five Hundred Thousand Dollars and not exceeding One Million Dollars; and six per cent on any value in excess of One Million Dollars.

**Art. 14.04 Class C**

If passing to or for the use of a brother or sister, or a direct lineal descendant of a brother or sister, of the decedent, the tax shall be three per cent on any value in excess of Ten Thousand Dollars and not exceeding Twenty-five Thousand; four per cent on any value in excess of Twenty-five Thousand Dollars, and not exceeding Fifty Thousand Dollars; five per cent on any value in excess of Fifty Thousand Dollars, and not exceeding One Hundred Thousand Dollars; six per cent on any value in excess of One Hundred Thousand Dollars and not exceeding Two Hundred and Fifty Thousand Dollars; seven per cent on any value in excess of Two Hundred and Fifty Thousand Dollars and not exceeding Five Hundred Thousand Dollars; eight per cent on any value in excess of Five Hundred Thousand Dollars and not exceeding Seven Hundred and Fifty Thousand Dollars; nine per cent on any value in excess of Seven Hundred and Fifty Thousand Dollars, and not exceeding One Million Dollars; and ten per cent on any value in excess of One Million Dollars.

**Art. 14.05 Class D**

If passing to or for the use of an uncle or aunt, or a direct lineal descendant of an uncle or aunt of the decedent, the tax shall be four per cent on any value in excess of One Thousand Dollars, and not exceeding Ten Thousand Dollars; five per cent on any value in excess of Ten Thousand Dollars, and not exceeding Twenty-five Thousand Dollars; six per cent on any value in excess of Twenty-five Thousand Dollars, and not exceeding Fifty Thousand Dollars; seven per cent on any value in excess of Fifty Thousand Dollars, and not exceeding One Hundred Thousand Dollars; ten per cent on any value in excess of One Hundred Thousand Dollars, and not exceeding Five Hundred Thousand Dollars; twelve per cent on any value in excess of Five Hundred Thousand Dollars and not exceeding One Million Dollars; and fifteen per cent on any value in excess of One Million Dollars.

**Art. 14.06 Class E—Foreign Bequest**

If passing to or for the use of the United States, to or for the use of any other person or religious, educational or charitable organization or institution, or to any other person, corporation or association not included in any of the classes mentioned in the preceding portions of the original Act known as Chapter 29 of the General Laws of the Second Called Session of the 38th Legislature, the tax shall be:

5%	on any value in excess of	\$ 500 and not exceeding	\$ 10,000
6%	on any value in excess of	10,000 and not exceeding	25,000
8%	on any value in excess of	25,000 and not exceeding	50,000
10%	on any value in excess of	50,000 and not exceeding	100,000
12%	on any value in excess of	100,000 and not exceeding	500,000
15%	on any value in excess of	500,000 and not exceeding	1,000,000
20%	on any value in excess of	1,000,000	

Provided, however, that this Article shall not apply on property passing to or for the use of the United States, or to or for the use of any religious, educational or charitable organization, incorporated, unincorporated or in the form of a trust, when such bequest, devise or gift is to be used within this state. The exemption from tax under the preceding provisions of this Article shall, without limiting its application under other appropriate circumstances, apply to all or so much of any bequest,

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

devise or gift to or for the use of the United States, or a religious, educational or charitable organization, which is, in writing and prior to the payment of the tax, irrevocably committed for use exclusively within the State of Texas or transferred to a religious, educational or charitable organization for use exclusively within this state.

Provided, further, that if the property so passing is to or for the use of a religious, educational, or charitable organization which conducts its operations on a regional basis, one such region of which includes the State of Texas, or any part thereof, then a bequest, devise or gift to be used within such region shall be deemed to be used within this state.

For purposes of this paragraph a region shall comprise not more than five contiguous states, either in whole or in part, one of which is the State of Texas.

For purposes of this paragraph, a religious, educational, or charitable organization shall include, but not be limited to, a youth program of physical fitness, character development, and citizenship training or like program.

#### **Art. 14.07 Applicability of Art. 14.06**

The provisions of Article 14.06 shall apply in respect to a decedent dying before the effective date of this Act if the tax imposed by Article 14.06, as heretofore amended, has not been paid prior to the effective date of this Act, and shall also apply to a decedent dying after the effective date of this Act.

#### **Art. 14.08 Divided Estate**

If the property passing as aforesaid shall be divided into two or more estates, as an estate for years or for life and a remainder, the tax shall be levied on each estate or interest separately, according to the value of the same at the death of the decedent. The value of estates for years, estates for life, remainders and annuities, shall be determined by the "Actuaries Combined Experience Tables," at four per cent compound interest.

#### **Art. 14.09 Bequests to Trustees (Or Executors)**

If a testator bequeaths or devises to his executor or trustee, property in lieu of commission, the value of such property in excess of reasonable compensation, as determined by the county judge and the Comptroller, shall be subject to taxation under this Chapter.

#### **Art. 14.10 Deductions**

The only deductions permissible under this law are the debts due by the estate, funeral expenses, expenses incident to the last illness of the deceased, which shall be due and unpaid at the time of death, all Federal, State, County, and Municipal taxes due at the time of the death of the decedent, attorney's fees and Court costs accruing in connection with the assessing and collecting of the taxes provided for under this Chapter, and an amount equal to the value of any property forming a part of the gross estate situated in the United States received from any person who dies within five (5) years prior to the death of the decedent, this deduction, however, to be only in the amount of the value of the property upon which an inheritance tax was actually paid and shall not include any legal exemptions claimed by and allowed the heirs or legatees of the estate of the prior decedent. A full statement of facts authorizing deduc-

tions must be made in duplicate under oath by the executor, administrator, or trustee, and one copy filed with the county clerk and the other with the Comptroller, before any deductions will be allowed.

#### Art. 14.11 Preliminary Report

Every executor, administrator or trustee of the estate of a decedent leaving property subject to taxation under this chapter, and every other person coming into possession of any portion of such estate where there is no administration of such estate, shall file a preliminary report within one month after coming into possession of any such property, giving the date of the death of such decedent, the approximate value and character of his estate and the persons entitled to receive same. Such report shall be in duplicate, one of which shall be filed with the Comptroller, and the other with the county clerk of the county wherein such decedent resided at the time of his death or wherein the principal part of his estate is located. The county clerk shall immediately notify the county judge of the filing of such report.

#### Art. 14.12 Inventory

Within six months after the executor, administrator or trustee or other person comes into full possession of such estate, he shall make report in duplicate and shall file the same in the manner provided in the preceding article. Said report must be made under oath and recorded as a permanent record in the Probate Court of the county wherein filed, and must give the following information:

(1) A list of all real estate located in Texas, including improvements thereon and the true and full value of such real estate and all improvements thereon at the date of the death of decedent;

(2) A complete list of all livestock, showing the location, kind and value thereof;

(3) All moneys on hand or in the bank, regardless of location, whether in this state or outside Texas;

(4) All notes, bonds, certificates, mortgages, stocks and other securities or evidences of indebtedness due the estate, showing the name and residence of those owing the estate, and the kinds of bonds owned, the kinds of notes, mortgages and stocks and other securities and the names of the corporation, association or company in which the stock or any interest is owned;

(5) The name and address of all persons entitled to such property and the value of such property to each beneficiary.

#### Art. 14.13 If Administration Unnecessary

If for any reason the administration of the estate of a decedent leaving property subject to taxation under this chapter, shall not be necessary in this State except to carry out the provisions of this law, it shall be in the discretion of the county judge and Comptroller to dispense with the appointment of an administrator, upon filing with each of them a satisfactory inventory of the taxable property by the trustee or owner. Upon the filing of such inventory, the appraisal and other proceedings required by this Chapter shall be had as in other cases.

#### Art. 14.14 Securities of Non-Resident

In case of the death of a non-resident of Texas, owning no property in this State except stocks or bonds in a domestic corporation or association, and such fact is shown to the satisfaction of the Comptroller, such

officer shall value said property. The administrator, executor or trustee may pay said tax when notified of the amount by the Comptroller, direct to such officer at Austin. The Comptroller shall then issue and deliver proper receipt therefor to the State Treasurer who shall keep a record of such payment and forward receipts to the trustee.

#### **Art. 14.15 Appraisal**

The judge of the county court having jurisdiction of the estate of the decedent shall appoint two (2) competent, disinterested persons, to be approved by the Comptroller, as appraisers to fix the value of the property of such decedent subject to taxation hereunder, or upon agreement of the parties interested to dispense with the appointment of appraisers, the county judge and Comptroller shall appraise the property and make and file a report of such appraisement. The appraisers, being first sworn, shall forthwith give notice to all persons known to have any claim or interest in the property to be appraised, including the Comptroller of Public Accounts, the executor, administrator or trustee, of the time and place when they will appraise the same. At such time and place, said appraisers shall appraise such property at its actual market value if it has a market value, and in case it has none, then its real value at the time of the death of the decedent, and shall thereupon make a report thereof in writing to said county judge and Comptroller, who shall file and keep such report. If the same decedent shall leave property taxable hereunder to more than one person, said appraisement and report shall be made for the property of each of such persons. Each appraiser shall be paid, on the certificate of the county judge, five dollars (\$5) for each day employed in such appraisal, together with his actual necessary expenses incurred therein. Where appraisers have been appointed under the provisions of this Act to appraise the assets of an estate for inheritance tax purposes and have made their return in accordance with the provisions of this Act to the county judge, should there be any part of the estate valued too high or too low, as the case may be, or any other cause in the opinion of the Comptroller or the interested party or parties of said estate that the same has not been appraised in accordance with the law governing the appraisal of same, the party or parties may within ten (10) days after the filing of the return of such appraisement, file with the county judge a motion in writing setting forth the cause or causes wherein they complain as to the report of the appraisers, and the county judge shall immediately give notice in writing to the Comptroller of Public Accounts and other interested parties of such complaint and set such motion down for a hearing not later than ten (10) days from the date the same was filed, and upon hearing thereof, if good and sufficient cause be shown, he may set aside such report of appraisement, and the same shall be held null and void, and proceed to appoint another set of appraisers as the law provides, and in the event he overrules said motion to set aside such report of appraisement, then in that event, said party shall have the right to appeal the same to the District Court of the county wherein the administration of the estate is being held or if there be no administration, or if it be a non-resident estate, then in the county wherein the principal part of the estate is located, within twenty (20) days by giving notice of appeal, and the District Court shall hear and try the same de novo, and enter its judgment on the matter in controversy accordingly.

#### **Art. 14.16 Fixing Tax**

Immediately after the filing of the appraisal report, or as soon thereafter as practical, the County Judge shall calculate and determine the



tax due on such property, according to the value thereof, as shown in such appraisement, and shall furnish a statement of the same to the Comptroller for verification. If the Comptroller finds the tax to be correct, he shall so advise the County Judge, whereupon it shall immediately become the duty of the County Judge to certify such amount to the executor, administrator, or trustee, and to the person to whom, or for whose use, the property passes, and said tax shall be a lien upon such property, from the death of the decedent until paid.

**Art. 14.17 Suspension of Assessment Pending Appeal**

Provided in any case where an appeal has been taken from the report of appraisement, as provided in Article 14.15 the assessment of the inheritance tax by the County Judge, as provided in Article 14.16, above, shall be suspended until such time as the matters in controversy shall have been finally adjudicated, and the County Judge shall reassess the tax in accordance with the new appraisement.

**Art. 14.18 Payment of Tax**

All taxes received and/or due under this law by any executor, administrator, or trustee, shall make such payment to the Treasurer of the State of Texas through the Comptroller of Public Accounts. Upon receipt of such payment the Comptroller shall issue proper receipt therefor and shall deliver one to the party making payment or to his attorney of record.

**Art. 14.19 Lien**

A lien shall exist on all property subject to taxation under this law to secure the payment of all taxes, penalties and costs provided for in this Chapter. All persons acquiring any portion of said property shall be charged with notice of the existence of all such unpaid taxes, penalties and costs, and of the lien securing their payment, which may be enforced in any suit brought for the collection of said taxes, penalties and costs.

**Art. 14.20 Foreclosure of Lien**

If the amount of tax due hereunder as shown by such assessment furnished by the county judge and Comptroller is not paid within three months from the date of said assessment, same shall draw two per cent interest per month until paid, beginning with the date of notice of such assessment, and shall be added to said tax and collected as a penalty. If said tax and penalty are not paid within nine months from the date of such assessment the Comptroller shall so advise the county attorney, or if there is no county attorney then the district attorney, who must immediately file suit in the district court to foreclose the tax lien as other tax liens are foreclosed.

**Art. 14.21 Final Account**

No final account of any executor, administrator, or trustee shall be allowed by the county judge unless such account shows and said judge finds that all taxes imposed under this law on any property or interest passing through his hands as such has been paid. Neither shall the county judge close any estate, or permit the delivery of any property to the legatee or heir without first ascertaining whether or not a tax is due under this Chapter, and if no tax is due, such fact must be shown by an instrument in writing, approved by the State Comptroller of Public Accounts, filed with the final papers closing said estate. Provided, however, the

Comptroller shall have the authority to grant an extension of six (6) months before any estate shall be charged any penalty or interest.

#### **Art. 14.22 Delivery of Securities**

No notes, bonds, certificates, mortgages, stocks, securities or other evidences of indebtedness due the estate of deceased persons and subject to taxation, hereunder, shall be transferred or delivered to any legatee or heir until the Comptroller issues a notice to the executor, administrator or trustee of such estate, or to their bondsmen, stating that all the inheritance taxes due this State have been paid. Such notice shall be authority for any administrator, executor or trustee to deliver such property to the proper legatee or heirs.

#### **Art. 14.23 Delivery before Payment**

Should any domestic corporation or association transfer to any legatee or heir, or should an administrator, executor or trustee deliver to any legatee or heir, the stocks or bonds of any domestic corporation or association, or deliver any other property, before the inheritance tax thereon due this state is paid, the corporation or association, or the administrator, executor, trustee and their bondsmen, shall be liable for said tax and penalty and all cost of collection.

#### **Art. 14.24 Offsets after Distribution**

Whenever any debts shall be proved against the estate of the decedent after the distribution of the property on which the tax has been paid and a refund is made by the distributee, due proportion of the tax so paid shall be repaid to him by the executor, administrator or trustee if still in his hands, or by the Comptroller upon warrant on the State Treasurer, if said tax has been paid.

#### **Art. 14.25 False Report**

If any person charged with the duty of filing a report hereunder shall knowingly make a false report, he shall be liable for a penalty of not exceeding one thousand dollars, which shall be collected by the county attorney, or district attorney where there is no county attorney, in the name of this State by suit in the county in which the administration is pending. Twenty per cent of such penalty shall be retained by the attorney prosecuting such suit as attorney's fees, and the remainder shall be distributed as the taxes collected under this law are distributed.

#### **Art. 14.26 Attorney's Fees**

For the services performed under the provisions of this Chapter, the county judge shall be allowed a fee equal to two (2%) per cent of the taxes collected, not to exceed thirty (\$30.00) dollars in any one estate, which fee shall be in addition to the taxes levied and collected hereunder, and shall be taxed and collected as costs in probate cases. If suit be brought, the county or district attorney prosecuting same shall receive as compensation therefor five (5%) per cent on the amount of taxes payable hereunder, not to exceed in any one case the sum of two hundred dollars (\$200), which fee shall be added to and collected from said estate in addition to the taxes and penalties herein provided for, and such compensation shall be in addition to all other fees and compensation provided by this law. The aggregate of fees received under this law shall not exceed in any one year two thousand dollars (\$2,000), and any fees earned

in addition to said sum shall be considered a portion of the tax and penalties collected, and be distributed in the same manner.

**Art. 14.27 Comptroller to Furnish Forms**

The Comptroller shall prescribe and furnish all forms necessary in making the reports and collecting the tax provided for by this law.

CHAPTER 15

ADDITIONAL INHERITANCE TAX

**Art.**

- 15.01 Amount of Tax—Federal Estate Tax Credit
- 15.02 Lien
- 15.03 When No Tax Due
- 15.04 Tax on Estate Subject to Federal Tax But on Which No State Tax is Due
- 15.05 Computation of Tax-Report
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- 15.09 Information by Clerk of Court to State Comptroller as to Estate for Inheritance Taxes
- 15.10 Filing of Report of Value As Determined for Federal Tax
- 15.11 Use of Federal Valuation by State Comptroller—Notice of Tax—When Due—Interest Penalty—Suit for Collection
- 15.12 Refund of Overpayment
- 15.13 Penalty—Failure to File Report
- 15.14 Non-Resident Decedent—Tax on Beneficiary's Share
- 15.15 Resident Partly Within and Partly Without State
- 15.16 Safe Deposits, Etc.—Delivery to Executor, Etc.—Notice to Comptroller

**Art. 15.01 Amount of Tax—Federal Estate Tax Credit**

In addition to the inheritance tax already levied by this State under existing laws, an inheritance and transfer tax is hereby levied upon the net estate of every decedent dying after this Chapter shall take effect, and whose estate, or any portion thereof, is, or hereafter shall be, made taxable under the inheritance tax laws of this State, or that may be subject to such taxes under any law of this State that may be hereinafter enacted. Said tax shall be, and is, levied upon the entire net value of the taxable estate of the decedent situated and taxable in the State of Texas, and the tax on each such estate shall be equal to the difference between the sum of such taxes due this State as inheritance or transfer taxes and eighty per cent (80%) of the total sum of the estate and transfer taxes imposed on such estate by the United States Government under the Revenue Act of 1926, by reason of the property of such estate which is situated in this State and taxable under the laws of this State.

**Art. 15.02 Lien**

The additional tax aforesaid shall be a lien upon the entire estate of the deceased and collectible out of said entire estate, or any part thereof.

regardless of exemptions and deductions, and, in the event two (2) or more persons succeed to or become the owners of taxable interest in such estate, and in event inheritance or transfer taxes are assessed under the law against portions thereof or interests therein severally, then said additional tax levied and collected under this Act shall be apportioned between or among such part owners in proportion to the amount of tax assessed against each share or interest in said estate.

#### **Art. 15.03 When No Tax Due**

In the event the amount of inheritance and transfer taxes assessed against any certain estate under the inheritance tax laws of this State shall equal or exceed eighty per cent (80%) of the estate or transfer taxes assessed and computed by the United States under the Revenue Act of 1926, against said estate or property belonging thereto and situated within the State of Texas, then no additional taxes shall be collected hereunder, it being the purpose and intention of this Chapter to collect only a sufficient additional tax when necessary, for the State to get the full benefit of the eighty per cent (80%) credit to the States provided for by Section 301, Chapter 27, of the Federal Revenue Act of 1926.

#### **Art. 15.04 Tax on Estate Subject to Federal Tax But on Which No State Tax is Due**

Where no inheritance tax is imposed on an estate, which is situated in this State, under the laws of this State, by reason of its value not exceeding in value the amount of exemptions, and an estate tax is imposed on such estate by the Federal Government, then there shall be, and is hereby levied and shall be collected from such estate, an inheritance or transfer tax sufficient in amount to equal eighty per cent (80%) of said tax imposed by the Federal Government under the Revenue Act of 1926, on that portion of said estate which is situated in the State of Texas.

In computing and determining the rate of the tax in such cases named in this Article, the State Comptroller, or other officers, whose duty it is to calculate and determine the amount of inheritance taxes shall compute the same upon the net valuations of said estate as determined and used by the United States in computing the amount of the Federal Government tax due upon said estate, and said tax shall be paid from the whole of such estate before partition and distribution among the joint or several owners of same, and said tax shall be due and payable and shall be subject to the same interest and penalties for nonpayment, as are other inheritance taxes under the provisions of the inheritance tax laws of the State.

#### **Art. 15.05 Computation of Tax-Report**

In determining what is eighty per cent (80%) of the United States tax mentioned in the preceding articles, the same shall be computed as eighty per cent (80%) of such taxes actually assessed and determined by the Federal Government under the Revenue Act of 1926, against every estate situated wholly in this State, or in case an estate is situated partly in this State and partly outside of this State, then such eighty per cent (80%) shall be computed as eighty per cent (80%) of the total amount of Federal taxes finally determined and assessed by the Federal Government under the Revenue Act of 1926, on and against that part of the estate situated in the State of Texas, and said amount of Federal tax shall be determined by multiplying the total Federal estate tax on the entire estate by a percentage which shall be the same percentage as the percentage of the net

estate located in Texas is to the total net estate of the decedent, wherever located, before deducting specific exemptions. In every case, it shall be the duty of the executor, administrator, or other officer, whose duty it is under the law to file reports of property with the county court for inheritance tax purposes, to file with the county court which has jurisdiction of such estate, and with the Comptroller of Public Accounts at Austin, a report showing the values placed on such estate and the amount of the estate tax assessed against the same by the Federal Government; and in case the Federal Government adds to or increases the net or taxable value of any estate and levies an additional tax in accordance therewith, after having already determined and assessed a tax against said estate, then such officer shall report, as aforesaid, the amount of said increased value and the amount of the added tax levied by reason thereof, this requirement applying only to an estate, or to the portion of an estate, which is situated in the State of Texas; and upon such report the additional taxes due this State shall be calculated and determined.

#### **Art. 15.06 Notice-Penalty**

In every case in which additional taxes have been assessed against an estate under the provisions of this Chapter, notice of the assessment of such additional tax shall be given by the county judge, at once, to the owners or co-parceners of said property against which said additional taxes have been assessed, and said tax shall become due in thirty (30) days after such notice, or within thirty (30) days after such owner or co-parcener shall have had actual notice of the assessment of such additional taxes, and said tax shall bear interest at the rate of six per cent (6%) per annum from date of such notice, formal or actual, and if said tax is not paid within three (3) months from the date of such notice, a penalty of two per cent (2%) per month shall accrue on said taxes from the date same were due, which said penalty shall be in lieu of interest after said penalty begins to accrue. Nothing in this Chapter shall prevent any part owner or co-parcener of property, against which such additional taxes have been assessed, from paying his pro rata of such taxes and thus relieving his property from interest or penalties after such payment.

#### **Art. 15.07 Law Applicable**

The notice, the date for maturing, payment, interest, and penalties provided for in this Chapter shall govern in every case of additional taxes assessed by virtue thereof, but the methods and means of collection and enforcement, by suit or otherwise, shall be governed by the provision of the inheritance tax laws of this State.

#### **Art. 15.08 Act Not to Increase Combined Tax Due to State and Federal Government**

Art. 15.01 to 15.07, inclusive, of this Chapter shall always be construed so as not to increase the total amount of taxes payable to the State and Federal Government combined upon the estates of decedents, the only purpose of said additional tax being to take full advantage of the eighty per cent (80%) credit allowed by the Federal Revenue Act of 1926, to those who have paid any estate, inheritance, legacy, or succession tax to any State or territory, or the District of Columbia in respect to any property included in the decedent's gross estate.

**Art. 15.09 Information by Clerk of Court to State Comptroller as to Estate for Inheritance Taxes**

Within ten (10) days after an inventory and appraisalment and list of claims shall have been filed and approved by the County or Probate Court in the estate of any decedent, it shall be the duty of the executor or administrator of such estate, to file with the Clerk of said Court, a statement setting forth the name and address and relation to the decedent of each beneficiary who shall receive any portion of said estate, whether under a will or by the law of descent and distribution, and the approximate value of each such beneficiary's share.

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

If any executor, administrator or county or Probate Clerk shall fail or refuse to comply with any of the provisions or requirements of this Article he shall be guilty of a misdemeanor, and upon conviction, shall be fined not less than Fifty Dollars (\$50) nor more than Two Hundred and Fifty Dollars (\$250)

**Art. 15.10 Filing of Report of Value as Determined For Federal Tax**

If the value of any estate taxes under Chapter 5, of Title 122, of the Revised Civil Statutes of 1925, with amendments (Chapter 14 of this Act), shall have been assessed and fixed by the Federal Government for the purpose of determining the Federal estate taxes due thereon, prior to the time the report which is required under the inheritance tax laws of this State is made to the State Comptroller, the value of the estate so fixed by the Federal Government shall be stated in such report. If the assessment of the estate by the Federal Government is made after the filing of such report to the State Comptroller, the officer or person whose duty it is to file the report which is required under the inheritance tax laws of this State, shall, within thirty (30) days after receiving notice or information of the final assessment and determination of the value of the estate as assessed and determined by the Federal Government for the purpose of fixing Federal estate taxes thereon, make to the Comptroller a report of the value of said estate as so fixed and determined, said report to be made under oath.

**Art. 15.11 Use of Federal Valuation by State Comptroller Notice of Tax—When Due—Interest Penalty—Suit for Collection**

Upon receipt of any report provided to be made to the State Comptroller under the preceding Article and upon consideration thereof, if that official deems it advisable, he may take into consideration said report in determining the value of any estate for inheritance tax purposes, and may value or revalue such estate for such purpose after giving each beneficiary or person at interest in said estate, thirty (30) days written notice of such Federal valuation and of his said purpose to value or revalue said estate, and shall give such beneficiary, or person at interest, an opportunity to be heard and to present evidence touching the value of such estate, and, after such notice and hearing, if any is had, the State Comptroller may finally fix the value of any such estate for inheritance tax purposes, and, if he deems the same just and true, he may accept the valuation as fixed by the Federal Government in any case in calculating and determining the amount of State inheritance taxes due and if any additional taxes are assessed under this or the next two (2) preceding Articles written notice thereof shall be given to the executor, administrator, or other legal representatives, and to every person who owns a taxable part or share in such estate, which notice may be given by letter directed to the last known address of such owner; and said taxes shall become due and payable within three (3) months from the date of such notice, and all such taxes shall bear interest at the rate of six per cent (6%) per annum from the date of such notice, and on all such taxes not paid within three (3) months after the date of such notice, there shall be collected as a penalty for nonpayment, interest at the rate of two per cent (2%) per month from the expiration of said three (3) months period until paid, which said penalty shall be in lieu of interest after said penalty begins to accrue; and if said taxes, penalty, and interest are not paid in full within nine (9) months from the date said taxes were so determined and assessed, suit shall be brought to collect the same in accordance with the provisions of Article 7134, Chapter 5, Title 122, of the Revised Civil Statutes of 1925, as amended.

**Art. 15.12 Refund of Overpayment**

In the event the valuation of any estate is decreased under the next preceding Articles, and the amount of the taxes is determined by the State Comptroller to be less than same had previously been calculated and determined, and if the overpayment of such taxes has been made, then the State Comptroller shall refund said taxes to the extent of the overpayment, out of any subsequent inheritance tax collections made by him before same is deposited to the General Revenue Fund of the State.

**Art. 15.13 Penalty—Failure to File Report**

If any person, whose duty it is under the law to file inheritance tax reports in this State, shall fail to file with the State Comptroller the report provided for by this Chapter, stating the value at which any estate has been assessed by the Federal Government, he shall be guilty of a misdemeanor and, upon conviction, shall be fined in any sum not less than Twenty-five Dollars (\$25) nor more than Five Hundred Dollars (\$500); but it shall be a defense of said prosecution if the offending party shows that his failure was not wilful, and that he had good cause for failing in such duty. The State Comptroller is authorized and directed to confer quarterly with the Department of Internal Revenue of the United States to ascertain the value of estates in Texas which have been assessed or valued for taxes by the Federal Government, and he shall cooperate with

said Department of Internal Revenue, furnishing to said Department all available information concerning estates of decedents in Texas which said Department may request.

**Art. 15.14 Nonresident Decedent—Tax on Beneficiary's Share**

The inheritance tax imposed upon every beneficiary's share of the estate of a nonresident decedent shall be a tax which, in amount, bears the same ratio to the entire tax for which the beneficiary's interest would be liable if the entire estate were situated in Texas, as the total value of the beneficiary's share of the decedent's estate which is situated in Texas, before allowable beneficiary deductions are made, bears to the total value of the beneficiary's entire share in the estate of the nonresident decedent wherever situated, before allowable beneficiary deductions are made.

**Art. 15.15 Resident Partly Within and Partly Without State**

In the event a resident of this State dies, leaving any estate subject to an inheritance tax, situated partly within and partly without this State, the inheritance tax imposed upon the share of any beneficiary of said estate situated in Texas shall be a tax which shall bear the same ratio to the amount such tax would be if his entire share and interest were situated in Texas, before allowable beneficiary deductions, bears to the total value of such beneficiary's share in such decedent's estate, wherever situated, before allowable beneficiary deductions are made.

**Art. 15.16 Safe Deposits, Etc.—Delivery to Executor, Etc.—Notice to Comptroller**

(1) No safe deposit company, trust company, corporation, bank or other institution, person or persons, having in possession or under control securities, deposits, or other assets belonging to a decedent, who was a resident or nonresident, or belonging to such a decedent and one or more persons, shall deliver the same to the executors, administrators, heirs, or legal representatives of said decedent, or to the survivor or survivors when held in the joint names of a decedent and one or more other persons, or upon their order or request, unless notice of the time and place of such intended delivery or transfer be served upon the Comptroller at least ten (10) days prior to said delivery or transfer, and delivery to be made only in the presence of the Comptroller or his duly authorized agent, who may be the county judge of the county in which said transfer transpires, unless the Comptroller, in writing, consents to the transfer without his presence. And it shall be lawful for the said Comptroller, or his representative, to examine all of said securities, deposits, or assets at the time of such delivery or transfer. Failure to serve such notice or failure to allow such examination shall render such safe deposit company, trust company, corporation, or bank or other institution, person or persons liable to the payment of the amount of the tax or interest due or thereafter to become due upon said securities, deposits, or other assets delivered or transferred, and in addition thereto, a penalty of not less than One Thousand Dollars (\$1,000) or more than Five Thousand Dollars (\$5,000); and the payment of such tax and interest thereon, or the penalty above described, or both, may be enforced in an action brought by the Comptroller in any court of competent jurisdiction.

(2) County Judge—Order to Safe Deposit Company, Etc., to Turn Over Property. When it is made to appear to a county judge in this State that a safe deposit company, trust company, bank, person, or corporation has in its possession, or under its control, papers of a decedent of whose



estate such court has jurisdiction, or that the decedent has leased from such a corporation a safe deposit box, and that such papers or such safe deposit box may contain a will of the decedent, or a deed to a burial plot in which the decedent is to be interred, or a policy of insurance issued in the name of the decedent and payable to a named beneficiary, he may make an order directing such deposit company, trust company, bank, person, or corporation to permit a person named in the order to examine such papers or safe deposit box in the presence of himself, or his duly authorized representative, or a representative of the Comptroller, and an officer of such safe deposit company, trust company, bank or corporation, or agent of such person, and if such documents are found among such papers, or in such box, to deliver said will to the clerk of the probate court of such county, or said deed to such persons as may be designated in such order, or said policy of insurance to the beneficiary named therein. The clerk of said court shall furnish a receipt upon the delivery of the will to him.

## CHAPTER 16

### STOCK TRANSFER TAX

#### Art.

- 16.01 Stock Transfer Tax
- 16.02 Stamps
- 16.03 Penalties
- 16.04 Cancellation of Stamps
- 16.05 Records
- 16.06 Transfers
- 16.07 Penalties
- 16.08 Claims
- 16.09 Application

#### Art. 16.01 Stock Transfer Tax

There is hereby imposed and levied a tax as hereinafter provided on all sales; agreements to sell; or memoranda of sales; and all deliveries or transfers of shares; or certificates of stock; or certificates for rights to stock; or certificates of deposit representing an interest in or representing certificates made taxable under this section in any domestic or foreign association, company, or corporation; or certificates of interest in any business conducted by trustee or trustees made after the effective date hereof, whether made upon or shown by the books of the association, company, corporation, or trustee, or by any assignment in blank or by any delivery of any papers or agreement or memorandum or other evidence of sale or transfer or order for or agreement to buy, whether intermediate or final, and whether investing the holder with the beneficial interest in or legal title to such stock or other certificate taxable hereunder, or with the possession or use thereof for any purpose, or to secure the future payment of money or the future transfer of any such stock, or certificate, on each hundred dollars of face value or fraction thereof, 3.3 cents except in cases where the shares or certificates are issued without designated monetary value, in which case the tax shall be at the rate of 3.3 cents for each and every share. It shall be the duty of the person or persons making or effectuating the sale or transfer to procure, affix and cancel the stamps and pay the tax provided by this Chapter. It is not intended by this Chapter to impose a tax upon an agreement evidencing

the deposit of certificates as collateral security for money loaned thereon, which certificates are not actually sold, nor upon such certificates so deposited, nor upon transfers of such certificates to the lender or to a nominee of the lender or from one nominee of the lender to another, provided the same continue to be held by such lender or nominee or nominees as collateral security as aforesaid; nor upon the retransfer of such certificates to the borrower; nor upon transfers of certificates from a fiduciary to a nominee of such fiduciary, or from one nominee of such fiduciary to another, provided the same continue to be held by such nominee or nominees for the same purpose for which they would be held if retained by such fiduciary, or from the nominee to such fiduciary; nor upon mere loans of stock or certificates, or the return thereof; nor upon deliveries or transfers to a broker for sale; nor upon deliveries or transfer by a broker to a customer for whom and upon whose order he has purchased the same, but transfers to the lender, or to a nominee or nominees as aforesaid, or retransfers to the borrower or fiduciary; and deliveries or transfers to a broker for sale, or by a broker to a customer for whom and upon whose order he has purchased the same shall be accompanied by a certificate setting forth the facts; nor upon transfers or deliveries made pursuant to an order of the Federal Securities and Exchange Commission which specifies and itemizes the securities ordered by it to be delivered or transferred (provided that this exemption shall not apply to such transfers or deliveries made before the passage of this Act); nor upon record transfers following such transfers or deliveries; nor in respect to shares or certificates of stock or certificates of rights to stock, or certificates of deposit representing certificates of the character taxed by this Chapter, in any domestic association, company, or corporation, if neither the sale, nor the order for, nor agreement to buy, nor the agreement to sell, nor the memorandum of sale, nor the delivery is made in this State and when no act necessary to effect the sale or transfer is done in this State. The payment of such tax shall be denoted by an adhesive stamp or stamps affixed as follows: In the case of a sale or transfer, where the evidence of the transaction is shown only by the books of the association, company, corporation, or trustee, the stamp shall be placed upon such books, and it shall be the duty of the person making or effectuating such sale or transfer to procure and furnish to the association, company, corporation, or trustee the requisite stamps, and of such association, company, corporation, or trustee to affix and cancel the same. Where the transaction is effected by the delivery or transfer of a certificate the stamp shall be placed upon the surrendered certificate and canceled; and in cases of an agreement to sell, or where the sale is effected by delivery of the certificate assigned in blank, there shall be made and delivered by the seller to the buyer, a bill or memorandum of such sale, to which the stamp provided for by this Chapter shall be affixed and canceled; provided, however, that such bill or memorandum may be made in duplicate and the stamp provided for by this Chapter may be affixed to a duplicate of such bill or memorandum and canceled, and such duplicate of such bill or memorandum may be kept by the party making such sale in his possession, provided that he shall enter upon the original of such bill or memorandum a date and number showing that such bill or memorandum was made in duplicate and that the stamp was affixed to the duplicate thereof retained by the seller. Every such bill or memorandum of sale or agreement to sell shall show the date of the transaction which it evidences, the name of the seller, the stock, or other certificate, to which it relates, and the number of shares thereof. All such bills or memoranda of sale shall bear a number upon the face thereof and no

more than one such bill or memorandum of sale made by the seller or any given day shall bear the same number. The aforesaid identification number of the bill or memorandum of sale shall in all cases be entered and recorded in a book of account.

#### Art. 16.02 Stamps

Adhesive stamps for the purpose of paying the State tax provided for by this Chapter shall be prepared by the Comptroller in such form, in such denomination and in such quantities as he may from time to time prescribe. He shall make provision for the sale of such stamps. The County Clerk of each county of the State of Texas is hereby made the agent for the Comptroller of Texas for the purpose of making sale of such stamps under such regulations as may be prescribed by the Comptroller.

#### Art. 16.03 Penalties

Any person or persons liable to pay the tax by this Chapter imposed, and anyone who acts in the matter as agent or broker for such person or persons, who shall make any sale, transfer, or delivery of shares or certificates taxable under this Chapter without paying the tax by this Chapter imposed, and any person, who shall in pursuance of any sale, transfer, or agreement, deliver any certificate or evidence of the sale or transfer of or agreement to sell any such certificate, or bill, or memorandum thereof, or who shall transfer or cause the same to be transferred upon the books or records of the association, company, corporation, or business conducted by a trustee or trustees, whose stock or other certificates taxable hereunder is sold or transferred, which shall transfer or cause the same to be transferred upon its books, without having the stamps provided for in this Chapter affixed thereto, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not less than Five Hundred Dollars (\$500) nor more than One Thousand Dollars (\$1,000), or be imprisoned for not more than six (6) months or by both such fine and imprisonment.

#### Art. 16.04 Cancellation of Stamps

In every case where an adhesive stamp shall be used to denote the payment of the tax provided by this Chapter, the person using or affixing the same shall write or stamp thereupon the initials of his name and the date upon which the same shall be attached or used, and shall cut or perforate the stamp in a substantial manner, so that such stamp cannot be again used; and if any person makes use of an adhesive stamp to denote the payment of the tax imposed by this Chapter, without so effectually canceling the same, such person shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not less than Two Hundred Dollars (\$200) nor more than Five Hundred Dollars (\$500), or be imprisoned for not less than six (6) months, or both.

Any person who shall wilfully remove or alter or knowingly permit to be removed or altered the canceling or defacing marks of any stamp provided for by this Chapter with intent to use such stamp, or who shall knowingly or wilfully buy, prepare for use, use, have in his possession or suffer to be used any washed, restored or counterfeit stamp, and any person who shall intentionally remove or cause to be removed or knowingly permit to be removed any stamp, affixed pursuant to the requirements of this Chapter, shall be guilty of a misdemeanor and on conviction thereof shall be liable to a fine of not less than Five Hundred Dollars (\$500) nor more than One Thousand Dollars (\$1,000), or be imprisoned for not more than one (1) year, or by both such fine and imprisonment.

**Art. 16.05 Records**

Every person, firm, company, association, corporation, or business conducted by a trustee or trustees, engaged in whole or in part in the making or negotiating of sales, agreements to sell, deliveries or transfers of shares or certificates taxable under this Chapter, or conducting or transacting a brokerage business, shall keep or cause to be kept at some accessible place within the State of Texas, a just and true book account, in such form as may be prescribed by the Comptroller, wherein shall be plainly and legibly recorded in separate columns, the date of making every sale, agreement to sell, delivery or transfer of such shares or certificates, the name and the number of shares thereof, the face value, the name of the seller or transferrer, the name of the purchaser or transferee, the face value of the adhesive stamps affixed and the identifying number of the bill or memorandum of sale used as provided for herein. This book shall also have recorded therein each separate purchase of stock transfer stamps, showing the date, the amount and from whom purchased.

Every association, company, or corporation, or business conducted by a trustee or trustees shall keep or cause to be kept at some accessible place within the State of Texas a stock certificate book and a just and true book of account, transfer ledger or register, in such form as may be prescribed by the Comptroller, wherein shall be plainly and legibly recorded in separate columns the date of making every transfer of stock, or other certificates included within this Chapter, the name and the number of shares thereof, the serial number of each surrendered certificate, the name of the parties surrendering such certificate, the serial number of the certificate issued in exchange therefor, the number of shares covered by said certificate, the name of the party to whom said certificate was issued and the face value of the stamps attached in payment of the tax on the transfer of the certificate. Evidence of the payment of the tax provided for herein shall be provided in one of the following manners and not otherwise, to wit:

(a) By attaching to the certificate surrendered for transfer, the stamps required for such transfer, or

(b) If the stamps are not attached to the certificate, but are attached to the bill or memorandum of sale affecting or evidencing the transfer of such certificate, by attaching to said certificate the said bill or memorandum of sale with stamps attached, or

(c) If the stamps covering the transfer are attached to a bill or memorandum effecting a transfer of one or more certificates or to one or more certificates included in said transfer, a notation must be made upon such certificates, bill or memorandum, as the case may be, clearly specifying and identifying the certificate or certificates to the sale or transfer of which the said stamps apply, or

(d) If the bill or memorandum bearing such stamps is not attached to the surrendered certificate or certificates to which it applies, a notation must be made upon such bill or memorandum stating the serial number or numbers of the certificates to which said bill or memorandum applies, as provided herein. It shall also retain and keep all surrendered or canceled shares or certificates and all memoranda relating to the sale or transfer of any thereof. All such books of account, transfer ledgers, registers, and certificate books, shall be retained and kept as aforesaid for a period of at least two (2) years subsequent to the date of the last entry made therein as herein required; and all such surrendered or canceled shares or certificates and memoranda relating to the sale or transfer of certificates taxable under this Chapter, shall be retained and kept for a

period of at least two (2) years from the date of the delivery thereof. For the purpose of ascertaining whether the tax imposed by this Chapter has been paid, all such books of account, transfer ledgers, registers, certificate books, surrendered or canceled shares or certificates and memoranda relating to the sale or transfer thereof, shall at all times between the hours of ten o'clock in the forenoon and three o'clock in the afternoon, except Saturdays, Sundays, and legal holidays, be open to examination by the Comptroller or his duly authorized representative.

The Comptroller may enforce his right to examine such books of account and bills or memoranda of sale or transfer; and such transfer ledger, register and certificate books and surrendered or canceled shares or certificates by mandamus. If the Comptroller ascertains that the tax provided for in this Chapter has not been paid, the Attorney General at the instance of the Comptroller shall bring an action in the name of the State of Texas, in any court of competent jurisdiction for the recovery of such tax and for any penalty incurred by any person under the provision of this Chapter.

Every person, firm, company, association, or corporation, or business conducted by a trustee or trustees that shall fail to keep such book of account or bills or memoranda of sale or transfer, or transfer ledger, register or certificate book or surrendered or canceled shares or certificates as herein required, or who alters, cancels, obliterates, or destroys any part of said records, or makes any false entry therein, or who shall refuse to permit the Comptroller or any of his authorized representatives freely to examine any of said books, records, or papers at any of the times herein provided, or, who shall in any other respect violate any of the provisions of this Article shall be deemed guilty of a misdemeanor and on conviction thereof shall for each and every such offense pay a fine of not less than Five Hundred Dollars (\$500) nor more than Five Thousand Dollars (\$5,000), or be imprisoned not less than three (3) months nor more than one (1) year, or by both such fine and imprisonment.

#### Art. 16.06 Transfers

No transfer of certificates taxable under this Article made after June 1, 1941, on which a tax is imposed by this Chapter, and which tax is not paid at the time of such transfer shall be made the basis of any action or legal proceedings, nor shall proof thereof be offered or received in evidence in any court of this State.

#### Art. 16.07 Penalties

Any person, firm, company, association, corporation, or business conducted by a trustee or trustees that shall (a) fail to keep any of the records required to be kept under the provision of this Chapter, or (b) shall make any sale, transfer or delivery of shares or certificates taxable under this Chapter without paying the tax by this Chapter imposed and (c) any person who shall in pursuance of any sale, transfer or agreement deliver any certificate in evidence of sale or transfer of or agreement to sell any such certificate, or bill or memorandum thereof, or who shall transfer or cause the same to be transferred upon the books or records of the association, company, corporation, or business conducted by a trustee or trustees whose stock or other certificates taxable hereunder is sold or transferred, which shall transfer or cause the same to be transferred upon its books without having the stamps provided for in this Chapter affixed thereto, or (d) shall make use of the adhesive stamp to denote the payment of the tax imposed by this Chapter without actually canceling such stamp as provided in Article 16.04 hereof, or (e) who shall wilfully

remove or alter or knowingly permit to be removed or altered the canceling or defacing marks of any stamp provided for by this Chapter with intent to use such stamp, or shall wilfully or knowingly buy, prepare for use, use, have in his possession or suffer to be used any washed, restored or counterfeit stamp, or who shall intentionally remove or cause to be removed or knowingly permit to be removed any such stamp, shall, in addition to any other penalties herein provided, forfeit to the State as a penalty a sum of not less than One Hundred Dollars (\$100) nor more than Five Hundred Dollars (\$500) for each and every violation hereof. The Attorney General of the State of Texas at the instance of the Comptroller shall bring suit for the recovery thereof in any court of competent jurisdiction in Travis County, Texas, and all moneys collected hereunder shall be paid into the State Treasury.

#### Art. 16.08 Claims

If any stamp or stamps shall have been erroneously affixed to any book, certificate, or bill or memorandum of sale, the Comptroller may, upon presentation of a claim for the amount of such stamp or stamps and upon the production of evidence satisfactory to him that such stamp or stamps was or were so erroneously affixed so as to cause loss to the person or persons making such claim, pay such amount or such part thereof as he may allow, to such claimant out of any moneys collected under this Chapter. Such claim shall be presented to the Comptroller in writing, duly verified, and shall state the full name and address of the claimant, the date of such erroneous affixing, the face value of such stamp or stamps and shall describe the instrument to which the stamp or stamps were affixed and contain such evidence as may be available upon which the demand for such refund is based. Such claim shall be presented within ninety (90) days after such erroneous affixing. The Comptroller is hereby authorized to prescribe the form of proof of such claim and if he finds that such claim is just and that such stamps have been erroneously affixed, he shall within sixty (60) days issue a warrant or warrants for the amount claimed and allowed by him. If the Comptroller rejects such claim or any part thereof the claimant is hereby authorized to file suit in a court of appropriate jurisdiction in the County of Travis against the Comptroller as defendant for the purpose of determining the amount of such claim. Such suit shall be filed within ninety (90) days from the date on which such claim shall have been rejected by the Comptroller. After final adjudication of the amount of such claim the Comptroller is hereby authorized to draw a warrant or warrants in payment of same. All such warrants for refunds under the provisions hereof shall be written and signed by the Comptroller, countersigned by the State Treasurer, and shall be paid only out of the funds collected hereunder.

#### Art. 16.09 Application

The tax imposed by this Chapter shall not be construed as being applicable to shares, share accounts, certificates or passbooks issued by any building and loan association chartered under the laws of this State, nor to credit unions defined in Article 2461, Revised Civil Statutes, 1925.

## CHAPTER 17

## STORES AND MERCANTILE ESTABLISHMENTS

## Art.

- 17.01 License Required
- 17.02 Application
- 17.03 Issuance of License
- 17.04 License Period
- 17.05 License Fees; Exemptions
- 17.06 Application
- 17.07 Store Defined
- 17.08 Coin-Operated Machines; Exception of Establishments
- 17.09 Penalty
- 17.10 Expenses of Administration; Payments to State Treasury

**Art. 17.01 License Required**

From and after the passage of this Chapter it shall be unlawful for any person, agent, receiver, trustee, firm, corporation, association or copartnership, either foreign or domestic to operate, maintain, open or establish any store or mercantile establishment in this State without first having obtained a license so to do from the Comptroller of Public Accounts as hereinafter provided.

**Art. 17.02 Application**

(a) Any person, agent, receiver, trustee, firm, corporation, association or copartnership desiring to operate, maintain, open or establish a store or mercantile establishment in this State shall apply to the Comptroller of Public Accounts for a license so to do. The application for a license shall be made on a form which shall be prescribed and furnished by the Comptroller of Public Accounts and shall set forth the name of the owner, manager, trustee, lessee, receiver, or other person desiring such license, the name of such store or mercantile establishment, the location, including the street number of such store, or mercantile establishment, and such other facts and information as the Comptroller of Public Accounts may require. If the applicant desires to operate, maintain, open or establish more than one such store or mercantile establishment, such applicant shall make application for a license to operate, maintain, open or establish each such store or mercantile establishment, but the respective stores or mercantile establishments for which the applicant desires to secure licenses may all be listed on one application blank.

(b) It is hereby made the further duty of the Comptroller to collect, supervise, and enforce the collection of all license and application fees that may be due under the provisions of this Chapter and to that end the said Comptroller is hereby vested with all of the power and authority conferred by this Chapter. The Comptroller is further authorized and empowered to promulgate rules and regulations to provide for the collection of the amount of license and application fees due under the provisions of this Chapter and on the effective date of this Chapter.

The Comptroller is hereby directed to determine the true ownership of any store or stores or establishments or departments, regardless of the name or operating name and collect the tax levied herein accordingly.

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

(c) Each application shall be accompanied by a filing fee of One Dollar (\$1) for each store or mercantile establishment operated or to be operated for the purpose of defraying the cost of the administration of this Chapter and the same is hereby appropriated. This application shall be mailed to the Comptroller and accompanying the application and the application fee shall be the amount of license due under the provisions of this Chapter. Those applications not mailed and which require the visit of a member of the Comptroller's staff for the collection of the application fee or the license fee shall pay a service fee of Five Dollars (\$5) for each store.

(d) Each application shall be signed and sworn to by the applicant as being true and correct, before an officer authorized to administer oaths, and may contain such other information as the applicant may wish to include, or as the Comptroller may require.

#### **Art. 17.03 Issuance of License**

As soon as practicable, after the receipt of any such application, the Comptroller of Public Accounts shall carefully examine such application to ascertain whether it is in proper form and contains the necessary and requisite information. If upon such examination, the Comptroller of Public Accounts shall find that any such application is not in proper form and does not contain the necessary and requisite information, he shall return such application for correction. If an application is found to be satisfactory, and if the filing and license fee as herein prescribed shall have been paid, the Comptroller of Public Accounts shall issue to the applicant a license for each store or mercantile establishment for which an application for a license shall have been made. Each licensee shall display the license so issued in a conspicuous place in the store or mercantile establishment for which such license is issued.

#### **Art. 17.04 License Period**

All licenses shall be so issued as to expire on the thirty-first day of December of each year. On or before the thirty-first day of December of each year every person, agent, receiver, trustee, firm, corporation, association, or copartnership having a license shall apply to the Comptroller of Public Accounts for a renewal license for the calendar year next ensuing. All applications for renewal licenses shall be made on forms which shall be prescribed and furnished by the Comptroller of Public Accounts. Each such application for a renewal license shall be accompanied by a filing fee of One Dollar (\$1) for each store or mercantile establishment operated or to be operated and by the license fee as prescribed in Article 17.05 of this Chapter. This application shall be mailed to the Comptroller and accompanying the application and the application fee, shall be the amount of license due under the provisions of this Chapter. Those applications not mailed and which require the visit of a member of the Comptroller's staff for the collection of the application fee or the license fee shall pay a service fee of Five Dollars (\$5) for each store. If the application is not received by the due date there shall be an added late fee of Fifty Cents (50¢) on each application and a five per cent (5%) penalty added to the amount of the license fee.

#### **Art. 17.05 License Fees; Exemptions**

(a) Every person, agent, receiver, trustee, firm, corporation, association or copartnership opening, establishing, operating or maintaining one or more stores or mercantile establishments within this State, under



the same general management, or ownership, shall pay the license fees hereinafter prescribed for the privilege of opening, establishing, operating or maintaining such stores or mercantile establishments. Every person, agent, receiver, trustee, firm, corporation, association and/or copartnership opening, establishing, operating and/or maintaining one or more stores or mercantile establishments within this State under the same general management and/or ownership and selling therein any equipment or appliances operated and/or used in connection with any electrical current and/or natural gas and/or artificial gas whether the same be in connection with the sale of electrical current and/or natural gas and/or artificial gas or not and whether such person, firm, agent, receiver, trustee, corporation, association and/or copartnership be also engaged in the business of furnishing some public utility services or not shall pay the license fees herein prescribed for the privilege of opening, establishing, operating and/or maintaining such stores or mercantile establishments. The license fee herein prescribed shall be paid annually and shall be in addition to the filing fee prescribed in Articles 17.02 and 17.04 of this Chapter. Provided that the term "store, stores, mercantile establishment, and mercantile establishments," wherever used in this Chapter shall not include: any place or places where or from which nothing is sold except ice; any wholesale and/or retail lumber and/or building material place of business, provided as much as seventy-five per cent (75%) of the gross proceeds of the business done each preceding calendar year at such place of business is derived from the sale of lumber and/or building material, provided that the term "building material" as used herein shall be construed to conclude any material which is used or usable in the construction of buildings, improvements or structures, including materials consumed in and any article to be built into and become a part of buildings, improvements or structures; also mechanics hand tools used in the construction of buildings, improvements, or structures; and/or oil and gas well suppliers and equipment dealers; and any place of business commonly known as a gasoline filling station, service station, or gasoline bulk station or plant, provided as much as seventy-five per cent (75%) of the gross proceeds of the business done thereat is derived from the selling, storing, or distributing of petroleum products; or business now paying an occupation tax measured by gross receipts except as otherwise specified in this Chapter; or any place or places of business used as bona fide wholesale or retail distributing points by manufacturing concerns for distribution of products of their own manufacture only; or any place or places of business used by bona fide processors of dairy products for exclusive sale at retail of such products; or any place or places of business commonly known as religious bookstores operated for the purpose of selling religious publications of any nature including Bibles, Song Books, Books upon Religious Subjects, Church Offering Envelopes, Church, Sunday School, and Training Union Supplies; or any restaurants, sandwich shops and other eating places; or any business operating for the purpose of parking automobiles, parking lots, garages; or any radio station; provided that gas and/or electric utilities shall not hereafter be required to pay any license fee under this Chapter for the privilege of operating in towns of three thousand (3,000) population or less according to the next preceding Federal Census, a store or stores for the purpose of selling gas and/or electrical appliances and/or parts for the repair thereof, provided as much as seventy-five per cent (75%) of the total gross receipts in the preceding calendar year in each such town where such a store or stores are located is derived from the sale therein of gas and/or electric service, and provided further that for the privilege of operating a store or stores in the towns of more than three

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

thousand (3,000) population, according to the next preceding Federal Census, for the purpose of selling any or all of the above-named commodities, gas and/or electrical utilities shall pay only the fees imposed by Articles 17.02, 17.04, 17.05 of this Chapter.

(b) The license fees herein prescribed shall be as follows:

1. Upon one (1) store the license fee shall be Four Dollars (\$4);
2. Upon each additional store in excess of one (1), but not to exceed two (2), the license fee shall be Nine Dollars (\$9);
3. Upon each additional store in excess of two (2), but not to exceed five (5), the license fee shall be Twenty-seven Dollars and Fifty Cents (\$27.50);
4. Upon each additional store in excess of five (5), but not to exceed ten (10), the license fee shall be Fifty-five Dollars (\$55);
5. Upon each additional store in excess of ten (10), but not to exceed twenty (20), the license fee shall be One Hundred and Sixty-five Dollars (\$165);
6. Upon each additional store in excess of twenty (20), but not to exceed thirty-five (35), the license fee shall be Two Hundred and Seventy-five Dollars (\$275);
7. Upon each additional store in excess of thirty-five (35), but not to exceed fifty (50), the license fee shall be Five Hundred and Fifty Dollars (\$550);
8. Upon each additional store in excess of fifty (50), the license fee shall be Eight Hundred and Twenty-five Dollars (\$825).

(c) All those establishments, except religious bookstores, exempted from the above schedule by this Chapter shall file an application as required by Articles 17.02 and 17.04 of this Chapter. If they meet the requirements of this Chapter for exemption, they shall pay an exemption fee of Four Dollars (\$4) for one (1) store and Nine Dollars (\$9) for each additional store in excess of one (1).

(d) All fees listed above are for a period of twelve (12) months. Upon the issuance of any license after the first day of January of any one year for the remainder of the year, there shall be collected such fractional part of the license fee hereinabove fixed as the remaining months in the calendar year (including the month in which such license is issued) bears to the twelve (12) month period.

#### **Art. 17.06 Application**

The provisions of this Chapter shall be construed to apply to every person, agent, receiver, trustee, firm, corporation, copartnership or association, either domestic or foreign, which is controlled or held with others by majority stock ownership or ultimately controlled or directed by one management or association of ultimate management.

#### **Art. 17.07 Store Defined**

The term "store" as used in this Chapter shall be construed to mean and include any store or stores or any mercantile establishment or establishments not specifically exempted within this Chapter which are owned, operated, maintained, or controlled by the same person, agent, receiver, trustee, firm, corporation, copartnership or association, either domestic or foreign, in which goods, wares or merchandise of any kind are sold at retail or wholesale.

#### **Art. 17.08 Coin-Operated Machines; Exception of Establishments**

Establishments and places of business merchandising or selling goods, wares, and merchandise only through coin-operated machines are not cov-

ered by provisions of this Chapter and thereby are not required to pay any tax or fees levied by this Chapter.

**Art. 17.09 Penalty**

Any person who, either for himself or as the agent of any person, receiver, trustee, firm, corporation, copartnership or association, shall operate or maintain any store or stores or mercantile establishment or mercantile establishments as defined in this Chapter without having displayed in a conspicuous place in such store or mercantile establishment the license fee receipt for the current year as required in this Chapter shall be guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than Twenty-five Dollars (\$25); nor more than One Hundred Dollars (\$100), and each day of such violation shall constitute a separate and distinct offense.

**Art. 17.10 Expenses of Administration; Payments to State Treasury**

The expenses incurred by the Comptroller of Public Accounts in the administration of this Chapter shall not exceed the amount received by him as application fees as herein provided. All moneys collected by the Comptroller of Public Accounts under the provisions of this Chapter shall be paid by him into the State Treasury daily as received; one-fourth of same shall be credited to the account of the Available School Fund and the remainder shall be credited to the account of the General Fund.

**CHAPTER 18****CEMENT PRODUCTION TAX****Art.**

- 18.01 Tax
- 18.02 Administration
- 18.03 Penalties
- 18.04 Other Taxes

**Art. 18.01 Tax**

There is hereby imposed a tax of \$0.0275 on the one hundred (100) pounds, or fractional part thereof, of cement on every person in this State manufacturing or producing in and/or importing cement into this State, and who thereafter distributes, sells or uses the same in intrastate commerce. Said tax shall accrue on and is imposed on the first intrastate distribution, sale or use; provided, however, no tax shall be paid except on one sale, distribution or use. The person liable for said tax is hereby defined as a "distributor," and said tax is to be allocated as hereinafter provided.

**Art. 18.02 Administration**

(1) Such tax shall be due and payable at the office of the Comptroller, at Austin, on the 25th day of each succeeding month based on the business done the preceding calendar month, and on or before said date such distributor shall also make and deliver to the Comptroller a report, sworn to, showing all cement distributed, used and sold, upon which a tax accrues as well as all produced within this State and imported into or exported out of this State, and such other information as the Comptroller may require.

(2) A complete record of the business done, together with any other information the Comptroller may require, shall be kept by each distributor; which said records shall be open to the Comptroller, Attorney General, Auditor, and their representatives. The Comptroller shall adopt rules and regulations for the enforcement hereof.

(3) No person shall act as distributor in this State who shall be delinquent in the payment of said taxes, and the Attorney General may enjoin his acting as such and may enforce the provisions hereof by suit instituted in Travis County, or other county having venue.

#### **Art. 18.03 Penalties**

If any person shall violate any of the provisions hereof, he shall forfeit to the State of Texas as a penalty not less than Twenty-five Dollars (\$25), and not more than One Thousand Dollars (\$1,000) for each violation, and each day's violation shall constitute a separate offense. If any person shall fail to pay said tax promptly, he shall forfeit two per cent (2%) thereof as a penalty, and, after the first twenty (20) days, he shall forfeit an additional eight per cent (8%). Delinquent taxes shall draw interest at the rate of eight per cent (8%) from due date. The State shall have a prior lien for all delinquent taxes, penalties and interest on all of the property used by the distributor in his business of distributing, selling and/or using cement.

#### **Art. 18.04 Other Taxes**

No tax shall be imposed upon any interstate sale or transaction, nor upon any sale, distribution or use exempt under either the State or Federal Constitutions, and no other like occupation tax shall be imposed by any municipal corporation on cement.

### CHAPTER 19

#### MISCELLANEOUS OCCUPATION TAXES

##### **Art.**

- 19.01 Miscellaneous Occupation Taxes
- 19.02 Certain Services Connected with Oil Wells
- 19.03 Penalty
- 19.04 Permit Not Granted Until Tax Paid

#### **Art. 19.01 Miscellaneous Occupation Taxes**

There shall be levied on and collected from every person, firm, company or association of persons, pursuing any of the occupations named in the following numbered subdivisions of this Article, an annual occupation tax, which shall be paid annually in advance except where herein otherwise provided, on every such occupation or separate establishment, as follows:

(1) **Auctioneers.** From every auctioneer there shall be collected an annual tax of Ten Dollars (\$10). For purposes of this Article, an auctioneer shall be deemed to be one engaged in the occupation of selling the goods of another at a competitive sale.

(2) **Brokers and Factors.** From every person, acting for himself or on behalf of another, engaged in the business or occupation of a Broker or Factor, whether he is principally engaged in such business or not, there shall be collected Twelve Dollars (\$12) per year. A "broker" or "factor,"

for the purpose of this subsection, is every person who, for another and for a fee, commission or other valuable consideration, rents, buys, sells, or transfers, for actual spot or future delivery, or negotiates purchases or sales or transfers of stocks, bonds, bills of exchange, negotiable paper, promissory notes, bank notes, exchange, bullion, coin, money, real estate, lumber, coal, cotton, grain, horses, cattle, hogs, sheep, produce and merchandise of any kind; whether or not he receives and delivers possession thereof; provided that this subsection shall not apply to a salesman who is employed on a salary or commission basis by not more than one retailer, wholesaler, jobber, or manufacturer, nor shall this subsection apply to or be construed to include persons selling property only as receivers, trustees in bankruptcy, executors, administrators, or persons selling under the order of any court, or any person who is included within the definition of any other occupation and is paying or subject to the payment of a tax under any other Subsection of this Chapter; however, this exemption shall not apply to any individual engaged in more than one occupation as defined by the other Subsections of this Article.

(3) **Insurance Adjusters.** From every person engaged in the occupation of adjusting insurance losses in this State, there shall be collected an annual tax of Ten Dollars (\$10).

For the purpose of this Subsection, a person shall be deemed to be engaged in the occupation of adjusting insurance losses when he investigates or ascertains the liability or amount of damage, or negotiates the adjustment of insurance claims or losses, or reports thereon; whether employed by an insurance company, or companies, or the insured, or is a member of a firm, association of persons, or an employee, or representative, or officer of such firm, association, or of a corporation, when such firm, association, or corporation is engaged in adjusting insurance losses.

(4) **Pawnbrokers.** From every pawnbroker, an annual tax of One Hundred and Fifty Dollars (\$150).

(5) **Loan Brokers.** From loan brokers, as that term is defined by the laws of this State, an annual tax of One Hundred and Fifty Dollars (\$150) for each place of business.

(6) **Money Lenders.** From every person, firm, association of persons, or corporation whose business is lending money as agent or agents for any corporation, firm or association, either in this State or out of it, an annual tax of One Hundred and Fifty Dollars (\$150). Provided, that if an office is maintained in more than one city, the State tax shall be payable in each city where an office is maintained; and, provided, further, that this tax shall not apply to persons, firms, or associations who lend money as an incident merely to the real estate business, nor shall said tax apply to banks, or banking institutions regularly organized as such under the laws of this State or the United States.

(7) **Tax on Dealers in Pistols.** There shall be collected from every person, firm or corporation engaging in the business of bartering, leasing, selling, exchanging, or otherwise dealing in pistols for profit, whether by wholesale or retail, an annual occupation tax of Ten Dollars (\$10) to be paid on or before January 1st of each year, and to be paid before continuing said business. Before engaging in said business, each such dealer shall obtain a license therefor, to be issued by the County Tax Collector of each county in which the applicant has a place of business, and for each separate place of business. The Comptroller of Public Accounts shall furnish said forms to the Tax Collectors.

(a) Counties and municipalities may levy tax. The Commissioners Courts of the several counties, as well as all municipalities, shall also have the power to levy and collect such a tax, equal to one-half ( $\frac{1}{2}$ ) of the amount herein levied.

(b) Records and reports. Each dealer shall keep a permanent record of all pistols bartered, sold, leased or otherwise disposed of. Such records shall show the number of the pistol, the name of the manufacturer, date of the transaction, salesman, purchaser, and their addresses, which record shall at all times be accessible to the Comptroller, Prosecuting Attorney, Grand Jury, and Attorney General of Texas, and a copy of this record shall be mailed to and filed with the Department of Public Safety. This filing shall be made each three (3) months.

(c) Pistol defined. "Pistol" as used herein, shall include every kind of pistol, revolver, automatic, semi-automatic, magazine pistol, and every other short firearm intended or designed to be aimed or fired from one hand.

(d) Exceptions. No person shall be required to have the license provided for in this law or pay the tax levied herein where such person is engaged exclusively in selling pistols to the Militia of the United States or other agencies of the Federal Government authorized by law to purchase the same.

(8) **Nine and Ten Pin Alleys.** From every person, firm, association of persons, or corporation, owning or operating for profit every nine or ten pin or other alley, by whatever name called, constructed or operated upon the principle of a bowling alley, upon which pins, pegs, balls, rings, hoops or other devices are used, and where the player thereof does not or is not required to make a coin deposit causing an electrical connection of any nature or kind before such game may be actually commenced, there shall be collected an annual tax of Ten Dollars (\$10) for each track or alley.

(9) **Ship Brokers.** Every person, firm, association of persons or corporation engaged in the management of business matters occurring between the owners of vessels and the shippers, or consignors of the freight which they carry shall be deemed a ship broker for the purpose of this Chapter. Every ship broker shall pay an annual tax of Twenty-five Dollars (\$25).

#### **Art. 19.02 Certain Services Connected with Oil Wells**

(1) The term "person" shall for the purpose of this Article mean and include individuals, partnerships, firms, joint stock companies, associations and corporations.

(2) An occupation tax at the rate and in the manner hereinafter provided is hereby imposed upon every person in this State engaged in the business of furnishing any service or performing any duty for others for a consideration or compensation, with the use of any tools, instruments or equipment, whether electrical or mechanical, owned, controlled, or furnished by such person, or by means of any chemical, electrical or mechanical processes when such service or duty is performed in or at any oil or gas well during and in connection with the drilling and completion, or reworking or reconditioning of any such well, in (1) cementing the casing seat of any oil or gas well, or (2) shooting, fracturing or acidizing the sands or other formations of the earth in any such well, or (3) surveying or testing such formations or the contents thereof, in any such well through the use of instruments or equipment at least a portion of which instruments or equipment is located within the well bore when the survey or test is made; provided, however, that nothing herein contained shall be construed or held to impose a tax upon the business of drilling or reworking any oil or gas well, or upon any service incidental thereto performed by persons engaged in such drilling or reworking business.

(3) The tax hereby imposed shall be at the rate of 2.42% of the gross amount received from the services or duty specified above after deducting from such gross amount the reasonable value at the well of any material used, consumed, expended in or incorporated into the well. The amount received from such taxable services during the calendar month next preceding shall be reported under oath by the person subject to the tax imposed hereby on a form prescribed and furnished by the Comptroller and the tax thereon shall be paid to the Comptroller at his office in Austin, Texas, on or before the 20th day of each month.

(4) A complete record of the business transacted, together with any other information the Comptroller may require shall be kept by each person furnishing any service or performing any duty subject to said tax, which said records shall be kept for a period of two (2) years, open to the inspection of the Comptroller of Public Accounts or the Attorney General of this State, or their authorized representatives. The Comptroller shall have the authority to adopt rules and regulations for the enforcement of this Article, and the collection of the tax levied herein.

(5) If any person shall violate any provisions of this Article, he shall forfeit to the State of Texas, as a penalty, the sum of not less than Twenty-five Dollars (\$25), and not more than Five Hundred Dollars (\$500) for each violation, and each day's violation shall constitute a separate offense, and in addition thereto delinquent taxes shall draw a penalty equal to one per cent (1%) per month from due date. The State shall be secured for all taxes, penalties, interests and costs due by any person under the provisions of this Article by a preferred lien, first and prior to any and all other existing liens, contract or statutory, legal or equitable, and regardless of the time such lien originated upon all the property used by said person in his business.

(6) If any section, subsection, sentence, clause, or phrase of this Article is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Article. The Legislature hereby declares that it would have passed this Article and each section, subsection, sentence, clause, and phrase thereof irrespective of the fact that any one or more of the sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

#### **Art. 19.03 Penalty**

Whoever shall pursue or follow any occupation, calling or profession or do any act taxed by law, or exhibit any machine or instrument, for which a tax is required to be paid, without exhibiting and displaying the tax receipt issued to him in the manner provided in this Act shall be guilty of a misdemeanor and upon conviction, fined in any sum not exceeding Fifty Dollars (\$50).

#### **Art. 19.04 Permit Not Granted Until Tax Paid**

No individual, company, corporation or association, failing to pay all taxes imposed by this Chapter, shall receive a permit, when such is required, to do business in this State, or continue to do business in the State, until the tax hereby imposed is paid. The receipt of the State Treasurer shall be evidence of the payment of such tax, and such receipt shall be construed as a permit to do business when a separate permit is not otherwise required by law.

CHAPTER 20

MISCELLANEOUS EXCISE TAXES

Art.

- 20.01 Definitions
- 20.02 Radio, Television Set, Phonograph, Component Part, Excise Tax Imposed
- 20.03 Boat and Boat Motor Excise Tax Imposed
- 20.04 Air Conditioner Excise Tax Imposed
- 20.05 Cosmetics Excise Tax Imposed
- 20.06 Playing Card Excise Tax Imposed
- 20.06½ Precious or Semi-precious Stones; All Articles Made of Fur on the Hide or Pelt; Articles Made of Precious Metal
- 20.07 Method of Imposition, Fiduciary Relationship Established, Legislative Intent, Taxes to be in Lieu of Any Other Excise Taxes on Items Taxed Under this Chapter
- 20.08 Promulgation of Rules and Regulations by Comptroller
- 20.09 Payment of Tax, Reports Required
- 20.10 Penalties for Failure to Pay or Misappropriation of Taxes Imposed
- 20.11 Permits Required
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- 20.13 Amount of Taxes, Penalties, Interest and Costs to Constitute Preferred Lien
- 20.14 Retention of Records
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- 20.16 Cancellation of Permits
- 20.17 Certification of Records and Documents
- 20.18 Penalties
- 20.19 Allocation of Revenues
- 20.20 Additional Penalties

**Art. 20.01 Definitions**

As used in this Chapter the following words shall have the following meanings unless a different meaning clearly appears from the context:

(a) "Person" shall mean and include any individual, firm, co-partnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, assignee for the benefit of creditors, trustee, trustee in bankruptcy, syndicate, the United States, any agency, institution or instrumentality of the United States, this State, any agency, institution, political subdivision or instrumentality of this State, or any other group or combination acting as a unit.

(b) "Comptroller" shall mean the Comptroller of Public Accounts of the State of Texas.

(c) "Retailer" shall mean and include every person in this State who manufactures, produces, or in any other manner acquires or possesses any of the items taxable under this Chapter for the purpose of making a resale, distribution, or use of the same in this State to the user; and it shall also include every person in this State who ships, transports or imports into this State any item taxable under this Chapter and makes the first distribution of, use by, or sale to the user of same in this State.



(d) "Distributor" shall mean and include every person other than a retailer who engages in the business of distributing or selling any item taxable under this Chapter within this State. If any distributor shall sell, use or distribute any item taxable under this Chapter to any person not holding a valid permit as required by this Chapter, said distributor shall qualify as a retailer and be liable for and shall be required to pay over to the State, at the time and in the manner herein provided for a retailer, the tax due on the item taxable under this Chapter.

(e) "Radios" shall mean the apparatus or devices commonly known as radios and radio receiving sets and shall include any instrument, apparatus or mechanical contrivance constructed, assembled or designed to receive oral, musical and similar sound broadcasts transmitted by radio broadcasting stations and shall include all sub-assemblies, devices, or instruments designed to be used in conjunction with other devices which when combined will constitute a device defined as a radio under this Chapter.

(f) "Television Sets" shall mean the apparatus or devices commonly known and sold as television sets or TV sets, and shall include any instrument, apparatus or mechanical contrivance constructed, assembled or designed to receive television broadcasts transmitted or projected to such sets by television broadcasting stations or systems. Television sets shall also mean and include all sub-assemblies, devices, or instruments for the reproduction of sound and/or visual information from tuning devices or electronic tape recordings; devices designed for the amplification of sound and/or visual information received or reproduced by such devices; one or more units designed to be used in conjunction with other devices which when combined will constitute a device defined as a television set under this Chapter.

(g) "Phonographs" shall mean the apparatus or devices, either mechanical or electrical, commonly known and sold as phonographs, including record players, high-fidelity phonographs and stereophonic phonographs, and shall also include all sub-assemblies, devices or instruments designed for the reproduction of sound from tuning devices, recordings of tape, records or wire; devices designed for the amplification of sound received or reproduced by such devices; or one or more devices designed to be used in conjunction with other devices which when combined will constitute a device defined as a phonograph under this Chapter.

(h) "Component part" shall mean any mechanical or electronic apparatus, equipment, device or electronic part or combination thereof, and shall also include any metal, wood, or plastic housing or cabinet built or manufactured to contain a radio, television, or phonograph, or any other apparatus, equipment, device, or part as may be used in the assembly, installation, maintenance or testing of radios, television sets or phonographs as defined under this Chapter.

(i) "Air Conditioner" shall mean any self-contained unit, apparatus or device commonly known, sold and used as an air conditioner and shall include any instrument, apparatus, or mechanical contrivance designed, constructed, or assembled as part of any such self-contained unit, apparatus or device to cool or assist in the cooling of air in any manner. The term "air conditioner" shall also include all sub-assemblies, devices or instruments commonly used in conjunction with any such other apparatus, device, sub-assembly or instrument, which when combined or connected as a functioning self-contained unit, apparatus or device will constitute an air conditioner. The term air conditioner, however, shall not include a buzz fan or any other apparatus, device or system

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designed and used only to circulate or move air, except when the same is a functioning part of a larger unit defined herein as an air conditioner.

(j) "Boat" shall mean any and every type of watercraft, other than a seaplane on water, used or capable of being used as transportation on water.

(k) "Boat Motor" shall mean any and every type of motor or marine engine, permanently mounted or detachable, which is used or capable of being used as a means of propelling any boat or watercraft.

(l) "Retail Sale" shall mean any transfer, exchange or barter of any item taxable under this Chapter, conditional or otherwise, in any manner or by any means whatsoever, to the user and shall include conditional sales, installment lease sales, and any other transfer of an item taxable under this Chapter in which the title is retained as security for payment of the purchase price and is intended to be transferred later. It shall also mean the first sale or distribution in this State to the user of any item taxable under this Chapter which has been imported or brought into the State, or which has been manufactured, constructed, produced, or assembled in Texas, or acquired in any manner without the tax having been previously paid thereon in Texas.

(m) "Distribution" shall mean and include any transaction other than a retail sale in which ownership or title to any item taxable under this Chapter is passed to a user.

(n) "Use" shall mean the keeping or retention in this State of any item taxable under this Chapter by the user, or the exercise of any right or power over any such item incident to the ownership thereof. The term "use" shall not include the storing, keeping, or retention of items taxable under this Chapter in any place of business where such items are sold, or offered for sale, or demonstrated for sale in the regular course of business conducted at such places, nor shall the said term include items taxable under this Chapter which are crated and stored in Texas for sale and delivery outside the State of Texas.

(o) "Retail Sale Price" shall mean the actual price, valued in money, paid or required to be paid, as a consideration in the purchase or acquisition of any item taxable under this Chapter by the user, and without any deductions being made therefrom on account of cost of materials, labor, transportation charges, or any expenses whatsoever, including allowance for any trade-ins.

(p) "User" shall mean and include every person who purchases, uses or acquires in any other manner any item taxable under this Chapter for his own use in Texas and who does not purchase or acquire same for the purpose of resale.

(q) "State, This State" shall mean the State of Texas.

(r) "In This State, Within This State" means within the exterior limits of the State of Texas and includes all territory within these limits owned by or ceded to the United States of America.

#### **Art. 20.02 Radio, Television Set, Phonograph, Component Part, Excise Tax Imposed**

There is hereby levied and shall be imposed upon the sale, distribution, or use in this State of radios, television sets, phonographs and component parts an excise tax equivalent to three per cent (3%) of the retail price for which such radios, television sets, phonographs and component parts are sold.

From and after the effective date of this Chapter every person who imports or in any other manner acquires for use in Texas a radio, television set, phonograph or component part upon which said tax has not

been theretofore paid to the State of Texas shall, for the purposes of this Chapter, be constituted as a retailer and shall report and pay said tax, equal to three per cent (3%) of the retail sale price thereof, to the State of Texas at the time and in the manner hereinafter provided.

It is expressly provided, however, that the tax imposed herein shall not apply to (1) radios or component parts used or acquired for use by police officers or other law enforcement agencies to receive short-wave broadcasts; (2) radios, television sets, phonographs, and component parts as defined in this Chapter used by holders of a valid license or permit that is issued by the "Federal Communications Commission" in the operation of the equipment for transmission and reception as contemplated under the terms of said license or permit; and (3) radios installed in new motor vehicles upon which a tax imposed by Chapter 6 of this Act has been paid or is required to be paid.

#### **Art. 20.03 Boat and Boat Motor Excise Tax Imposed**

There is hereby levied and shall be imposed upon the sale, distribution, or used in this State of boats and boat motors an excise tax equivalent to one and one-half per cent (1.5%) of the retail price for which such boats and boat motors are sold.

From and after the effective date of this Chapter every person who imports or in any manner acquires for use in this State any boat and/or boat motor upon which the said tax has not theretofore been paid to the State of Texas shall, for the purposes of this Chapter be considered as a retailer and shall report and pay said tax equal to one and one-half per cent (1.5%) of the retail price thereof to the State of Texas at the time and in the manner hereinafter provided.

It is expressly provided, however, that the tax imposed in this Article shall not apply to any boat or boat motor used or intended to be used in commercial pursuits.

#### **Art. 20.04 Air Conditioner Excise Tax Imposed**

There is hereby levied and shall be imposed upon the sale, distribution or use of air conditioners in this State an excise tax equivalent to three per cent (3%) of the retail price for which such air conditioners are sold.

From and after the effective date of this Chapter every person who imports or in any other manner acquires for use in this State any air conditioner upon which said tax has not theretofore been paid to the State of Texas shall, for the purposes of this Chapter, be considered as a retailer and shall report and pay said tax equal to three per cent (3%) of the retail price thereof to the State of Texas at the time and in the manner hereinafter provided.

It is expressly provided, however, that the tax imposed in this Article shall not apply to air conditioners installed in new motor vehicles upon which a tax imposed by Chapter 6 of this Act has been paid or is required to be paid.

#### **Art. 20.05 Cosmetics Excise Tax Imposed**

There is hereby levied and shall be imposed upon the sale, distribution or use in this State of perfumes, essences, extracts, toilet waters, cosmetics, petroleum jellies, pomades, hair dressings, hair restoratives, hair dyes, aromatic cachous, toilet powders, hair oils, and any other similar substance, article, or preparation by whatsoever name known or distinguished, which is used, or applied or intended to be used or applied, for

toilet purposes an excise tax equivalent to two and two-tenths per cent (2.2%) of the retail price for which any such items are sold.

From and after the effective date of this Chapter every person who imports or in any other manner acquires for use in this State any item taxable under this Article upon which said tax has not been theretofore paid to this State, shall, for the purposes of this Chapter be considered as a retailer and shall report and pay said tax, equal to two and two-tenths per cent (2.2%) of the retail price thereof, to the State of Texas at the time and in the manner hereinafter provided.

It is expressly provided, however, that the tax imposed by this Article shall not apply to (1) the sale of any item described in this Article to any person operating a barber shop, beauty parlor, or similar establishment for use in the operation thereof; the resale of any such item at retail by any such person, however, shall be considered as a retail sale subject to the tax imposed by this Article; (2) the sale of any lotion, oil, powder or other item intended to be used or applied only in the care of babies; (3) the sale of miniature samples of any item described in this Article for demonstration use only to a house-to-house salesman by the manufacturer or distributor of such items. The resale of such miniature samples at retail by such door-to-door salesman shall be considered as a retail sale subject to the tax imposed by this Article.

#### **Art. 20.06 Playing Card Excise Tax Imposed**

There is hereby levied and imposed upon the sale, distribution or use in this State of packs of playing cards used or capable of being used to play poker, bridge, canasta or pinochle, an excise tax equivalent to six cents (6¢) per pack.

From and after the effective date of this Chapter every person who imports or in any manner acquires for use in this State playing cards upon which said tax has not theretofore been paid to the State of Texas shall, for the purposes of this Chapter be considered as a retailer and shall report and pay said tax equal to six cents (6¢) per pack of playing cards to the State of Texas at the time and in the manner hereinafter provided.

#### **Art. 20.06- $\frac{1}{2}$ Precious or semi-precious stones; all articles made of fur on the hide or pelt; articles made of precious metals**

There is hereby levied and shall be imposed upon the sale, distribution or use in this State on all articles commonly or commercially known as "precious or semi-precious stones"; all articles made of fur on the hide or pelt; articles made of precious metals; having a value in excess of Twenty-five Dollars (\$25), an excise tax equivalent to three per cent (3%) of the retail price for which any such items are sold.

From and after the effective date of this Article every person who imports or in any other manner acquires for use in this State any item taxable under this Article upon which said tax has not theretofore been paid to the State of Texas shall for the purposes of this Article be considered as a retailer and shall report and pay said tax equal to three per cent (3%) of the retail price thereof to the State of Texas at the time and in the manner hereinafter provided.

Provided, however, that a retailer who shall be required to collect any of the tax imposed by this Article upon the sale or distribution of any of the items taxable under this Article in this State, or who shall be required to pay the tax levied herein upon any item taxable under this

Article used by said retailer shall not be required to make the report called for in Article 20.09 of this Chapter.

**Art. 20.07 Method of Imposition, Fiduciary Relationship Established, Legislative Intent, Taxes to be in Lieu of Any Other Excise Taxes on Items Taxed under This Chapter**

(a) Every retailer who makes a sale or distribution of an item taxable under this Chapter in Texas to the user shall add the amount of said tax to the selling price of such item which said tax shall be collected from the purchaser or recipient of such item at the time of such sale or distribution, and said tax shall be reported and paid to the State of Texas as hereinafter provided.

(b) It is the intent of this Chapter that the taxes imposed herein shall constitute excise taxes imposed on the persons using items taxable under this Chapter and the granting of a permit to retailers to collect such taxes for and in behalf of the State of Texas, shall be deemed to establish a fiduciary relationship.

(c) In the event any tax imposed upon the sale, distribution, or use of any item taxable under this Chapter is in conflict with the Constitution or laws of the United States or the Constitution of Texas, then it is hereby declared to be the intention of this Chapter to impose such tax on the first subsequent sale, distribution, or use of such item which may be subject to being taxed.

(d) The excise taxes imposed under this Chapter shall be in lieu of any other excise tax imposed by the State of Texas or any political subdivision or instrumentality thereof, upon the items taxable under this Chapter.

**Art. 20.08 Promulgation of Rules and Regulations by Comptroller**

The Comptroller is hereby vested with power and authority to promulgate rules and regulations, not inconsistent with this Chapter, for the enforcement of the provisions of this Chapter and the collection of the revenues levied hereunder.

**Art. 20.09 Payment of Tax, Reports Required**

(a) Every retailer who shall be required to collect any of the taxes imposed by this Chapter upon the sale or distribution of any of the items taxable under this Chapter in this State, or who shall be required to pay the tax levied herein upon any item taxable under this Chapter used by said retailer, shall on or before the tenth day of each month remit or pay over to the State of Texas at the office of the Comptroller at Austin, Travis County, Texas, ninety-nine per cent (99%) of the amount of tax or taxes required to be collected during the calendar month immediately preceding, and one hundred per cent (100%) of the amount of tax or taxes required to be paid for items taxable under this Chapter which are used by said retailer during said period. Provided, however, that this discount shall be allowed only when a retailer files the report and pays the amount of tax due within the time specified for such report and payment, and provided further, that the maximum amount of money allowed to be retained by any retailer under this discount provision shall not exceed One Thousand Dollars (\$1,000) in any one month. At the time of payment of the tax or taxes due, each retailer shall also make and deliver to the Comptroller at his office in Austin, Travis County, Texas, a report properly sworn to and executed by such retailer, or his representative in charge, which shall show the date such report was

executed, the name and address of said retailer and the month which the report covers, and shall show separately by units and value in money the items taxable under this Chapter on hand at the beginning and end of the month and complete information on all taxable items handled during the month including: value of taxable items received in interstate commerce, value of items purchased or received in intrastate commerce, reflecting separately the number of taxable items and value thereof received with the tax paid and the number of taxable items and value thereof received without the tax having been paid, the number of taxable items and value thereof manufactured or assembled in Texas; the number of taxable items and value thereof sold in interstate commerce; the number of taxable items and value thereof returned to the manufacturer; the number of taxable units and value thereof lost by fire or other accident; the number of taxable items and value thereof used for taxable purposes by the retailer and his representatives, and shall include gross value of all retail sales of all items taxable under this Chapter. Provided that where a retailer has not sold, distributed, or used any taxable items during any month or part thereof, he shall nevertheless file with the Comptroller the report required herein setting forth such fact or information. Provided, further, that the Comptroller may prepare and furnish a form prescribing the order in which the information required herein shall be set up on said monthly report, but the failure of any retailer to obtain such form from said Comptroller shall be no excuse for the failure to file a report containing all the information required to be reported herein. Every retailer, at the time of making said report, shall attach legal tender thereto or make proper form of money order or exchange payable to the State Treasurer in amount of tax for the period covered by the report.

(b) If any retailer shall fail to remit proper taxes collected upon the sale or distribution of any item taxable under this Chapter, the Comptroller may employ auditors or other persons to ascertain the correct amount due, and if such taxes have not been properly remitted and paid to the State of Texas, the retailer shall pay as additional penalty any reasonable expenses incurred by the Comptroller in such audit.

#### **Art. 20.10 Penalties for Failure to Pay or Misappropriation of Taxes Imposed**

(a) All taxes collected hereunder by any retailer, or by any director, officer, agent, employee, trustee, receiver of such retailer or by any person, shall be for the use and benefit of the State of Texas, and shall be paid to the State of Texas as provided in this Chapter.

(b) If any such retailer, or any director, officer, agent, employee, trustee, receiver of such retailer, or any person shall willfully fail or refuse to pay to the State of Texas any such tax funds collected under the provisions of this Chapter, on or before the date such payment is due as provided by this Chapter, such retailer or such director, officer, agent, employee, trustee, receiver of such retailer, or such person shall be guilty of a felony and shall be punished by confinement in the State penitentiary for not more than five (5) years or by confinement in the county jail for not less than one (1) month nor more than six (6) months, or by a fine of not less than One Hundred Dollars (\$100) nor more than Five Thousand Dollars. (\$5,000), or by both such fine and imprisonment.

(c) If any director, officer, agent, employee, trustee, receiver of any retailer, or any person, shall fraudulently misapply or convert to his own use any tax fund collected for the State of Texas under the provi-

sions of this Chapter by such retailer, or any director, officer, agent, employee, trustee, receiver of such retailer, or by such person, which said money has come into the possession of or that is in the care of or under the control of such director, officer, agent, employee, trustee, receiver of such retailer, or of such person, and which said money is required to be paid to the State of Texas under the provisions of this Chapter, such director, officer, agent, employee, trustee, receiver of such retailer, or such person shall be guilty of a felony and upon conviction, shall be punished by confinement in the State penitentiary for not more than five (5) years, or by confinement in the county jail for not less than one (1) month, nor more than six (6) months, or by a fine of not less than One Hundred Dollars (\$100), nor more than Five Thousand Dollars (\$5,000), or by both such fine and imprisonment. Venue of prosecution under this Article shall be in Travis County, Texas, or in the county in which the offense occurs.

#### **Art. 20.11 Permits Required**

(a) From and after the effective date of this Chapter, all retailers of items taxable under Articles 20.02, 20.03 and 20.04 of this Chapter in this State now engaged or who desire to become engaged in the sale, use or distribution of items taxable under Articles 20.02, 20.03 and 20.04 of this Chapter, shall file a duly acknowledged application for a retailer's permit, which shall be non-assignable, with the Comptroller, said application to be accompanied by a fee of Five Dollars (\$5). Said applications to be on a form prescribed by the Comptroller, to be furnished upon written request, the failure to furnish which shall be no excuse for the failure to file the same unless an absolute refusal is shown. An application shall be filed and a permit obtained for each place of business owned or operated by a retailer. Said form shall set forth the name under which such retailer transacts or intends to transact such business as a retailer, the principal office, residence, or place of business in Texas, and if other than an individual, the principal officers of a corporation or the members of a partnership or association and their office, street, or post office address. The Comptroller may require in said application such other information as he may desire. No retailer shall make a sale, use or distribution of any item taxable under Articles 20.02, 20.03 and 20.04 of this Chapter until such application has been filed and a permit has been obtained.

(b) Upon receipt of the application and the bond hereinafter provided for, the Comptroller shall issue to every such retailer a nonassignable, consecutively numbered permit authorizing the sale, use, or distribution of items taxable under Articles 20.02, 20.03 and 20.04 of this Chapter in this State from the date of the issuance of said permit, until and including the following August 31st. On or before September 1st of each year, and before any retailer shall make a sale, use, or distribution of items taxable under Articles 20.02, 20.03 and 20.04 of this Chapter or engage in selling items taxable under Articles 20.02, 20.03 and 20.04 of this Chapter in this State after August 31st, an application shall be filed and a permit obtained for the fiscal year. Said permit shall provide that the same is revocable and shall be cancelled upon violation of any provisions of this Chapter, or any rule or regulation adopted by the Comptroller. If such permit is cancelled or suspended, said retailer shall not sell, use or distribute such items upon which a tax is required to be paid until a new permit is granted or the original permit is reinstated. Provided, however, that no permit shall be issued or reinstated where it appears from a duly verified audit made as herein provided by an author-

ized representative of the Comptroller that the applicant is delinquent in the remittance or payment of any tax, penalty, or interest under the provisions of this Chapter.

#### **Art. 20.12 Bond Required**

(a) Before any permit shall be issued and before engaging in the sale, use or distribution of any item upon which a tax is required to be paid under the terms of Articles 20.02, 20.03 and 20.04, herein, in Texas, every retailer shall execute and file with the Comptroller a good and sufficient surety bond, which shall run concurrently with the permit required of a retailer to be obtained. The said bond shall be signed by the said retailer and a good and sufficient surety company or companies authorized to do business in this State, to be approved by the Comptroller, and in an amount to be prescribed by the Comptroller but in no event shall said bond be less than One Hundred Dollars (\$100). The said bond shall be payable to the State of Texas, and conditioned upon the full, complete, and faithful performance by the retailer of all the conditions and requirements imposed upon him by this Chapter, or the rules and regulations of the Comptroller promulgated hereunder, on a form to be prescribed by the Comptroller expressly providing for the performance of said obligations, and the remittance and/or payment at Austin, Travis County, Texas, of all taxes collected and required to be collected for the use and benefit of the State, all taxes due upon the use of items taxable under Articles 20.02, 20.03 and 20.04 of this Chapter by said retailer, and all costs, penalties, and interest provided in this Chapter, provided, however, that in any event the total of all recoveries under such bond for any and all breaches of its conditions occurring at any time while it remains in force to support a permit, shall not for any fiscal year exceed the penal sum named therein; provided further, that any such bond, continuous in form, may be, if sufficient and acceptable to the Comptroller, continued in effect by a renewal certificate, and, if so continued in effect, shall be sufficient to support the issuance of any new permit, and provided further, that the said renewal certificates, as, if and when issued, shall have all the force and effect of the original bond for the fiscal year for which said renewal certificate is issued. The amount of any bond required of any retailer shall be fixed by the Comptroller and additional bond may be required by the Comptroller at any time an existing bond becomes insufficient, unsatisfactory, or unacceptable. However, the retailer may demand a reduction of his bond after six (6) months from the effective date thereof to a sum to be not more than two (2) times the highest tax said retailer has collected and paid to the State for any month during preceding six (6) months, but which shall never be less than the minimum aforesaid.

Provided that whenever any person imports for his own use in Texas, any item taxable under Articles 20.02, 20.03 and 20.04 of this Chapter and pays the tax to the State of Texas forthwith and before said item is used in Texas, the Comptroller may waive the requirement for furnishing bond and obtaining a permit to use said item in Texas.

(b) The Comptroller shall have the right, if, in his opinion, the amount of any existing bond shall become insufficient, or any surety on a bond shall become unsatisfactory or unacceptable, to require the filing of a new or an additional bond. When said new bond has been furnished, the Comptroller shall cancel the bond for which said new bond is substituted. No recoveries or execution of any new bond may be demanded when any new permit is issued or revived, but no revocation or revival



shall affect the validity of any bond. Should any retailer fail or refuse to supply a new or additional bond within ten (10) days after demand, said retailer's permit shall be cancelled by the Comptroller.

(c) Any surety on any bond furnished by any retailer as above provided shall be released and discharged from any and all liability to the State of Texas accruing on such bond after the expiration of thirty (30) days from the date upon which such surety shall have lodged with the Comptroller written request to be released and discharged. Provided, however, that such request shall not operate to relieve, release, or discharge such surety from any liability already accrued, or which shall accrue before the expiration of said thirty-day period. The Comptroller shall promptly on the receipt of notice of such request notify the retailer who furnished such bond, and unless such retailer shall within fifteen (15) days from the date of said notice, file with the Comptroller a new bond with a surety company duly authorized to do business under the laws of the State, in the amount and form hereinbefore in this Chapter provided, the Comptroller shall proceed to cancel the permit of said retailer in the manner herein provided. If such new bond shall be furnished by said retailer as above provided, the Comptroller shall cancel and surrender the bond for which such new bond is substituted.

(d) In lieu of giving a bond, any retailer may deposit in the Suspense Account of the State Treasury money in the amount of the bond that may be required which shall never be released until a bond is executed in lieu thereof, or until the Comptroller has made an audit of the retailer's records and authorized the same released. Provided further, that suit may be filed against any surety on any bond, without first resorting to or exhausting the assets of said retailer, or without making said retailer, as principal obligor in said bond, a party to said suit.

#### **Art. 20.13 Amount of Taxes, Penalties, Interest and Costs To Constitute Preferred Lien**

All taxes, penalties, interest and costs due by any retailer under the provisions of this Chapter and all taxes collected and required to be paid by said retailer to the State, shall be secured by a preferred lien, first and prior to any and all other existing liens, contract or statutory, legal or equitable, and regardless of the time such liens originated, upon all the personal property of any retailer, devoted to or used in his business as a retailer, which property shall include equipment, inventories on hand of every kind and character whatsoever used or usable in such business, including cash on hand and in bank, accounts and notes receivable, and any and all other personal property of every kind and character whatsoever or wherever situated devoted to such use.

#### **Art. 20.14 Retention of Records**

Every retailer shall keep in Texas for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General or their authorized representatives, a complete record of all purchases and sales of items taxable under this Chapter, and his records shall show the date of receipt, the name and address of the person from whom purchased, to whom sale was made, the means of delivery, and the quantity in units and value of all such items taxable under this Chapter. Also it shall show all sales of the same as and when made from stocks on hand, or direct from the manufacturer.

**Art. 20.15 Investigations by Comptroller Authorized**

For the purpose of enabling the Comptroller, or his authorized representatives, to determine the amount of tax collected and payable to the State or to determine whether a tax liability has been incurred, they shall have the right to inspect any premises where any items taxable under this Chapter are produced, made, prepared, stored, transported, sold or offered for sale or exchange, examine all of the books and records required herein to be kept and any and all books and records that may be kept incident to the conduct of the business of said retailer, user, distributor or other person, dealing in or possessing any items taxable under this Chapter. For the foregoing purposes, said authorized officers shall also have the right to remain upon said premises for such length of time as will be necessary to fully determine said tax liability, or whether a tax liability has been incurred.

**Art. 20.16 Cancellation of Permits**

(a) The Comptroller, or any duly authorized representative of said Comptroller, is hereby authorized to cancel, or to refuse the issuance, extension, or reinstatement of any retailer's permit as provided under the terms of this Chapter to any person who has violated or has failed to comply with any duly promulgated rule and regulation of the Comptroller or any of the provisions of this Chapter, including any of the following offenses, which may be applicable to such permittee: (1) failure or refusal to remit or pay to the State of Texas any tax levied herein, which said tax is shown to have accrued and to be owing to said State by a duly verified audit made by an authorized representative of the Comptroller from any report filed with said Comptroller or from any books or reports required to be kept or any books or records authorized to be audited by the provisions of this Chapter; (2) failure to file any return or report required under the provisions of this Chapter; (3) the making and filing with the Comptroller any false or incomplete return or report required under the provisions of this Chapter; (4) failure to keep any books and records for the period and in the manner required to be kept; (5) the falsifying, destroying, mutilating, removing from the State, or secreting any such books and records; (6) refusal to permit the Comptroller, Attorney General, or their authorized representatives, to inspect, audit, and examine any books and records required herein to be kept, or any pertinent records that may be kept, or to inspect any premises said persons are authorized herein to inspect; (7) the engaging in any business requiring a permit under the provisions of this Chapter, without obtaining and possessing a valid permit.

(b) Before any permit may be cancelled or the issuance, reinstatement, or extension thereof refused, the Comptroller shall give the owner of such permit or applicant therefor not less than five (5) days notice of a hearing at the office of the Comptroller, in Austin, Travis County, Texas, granting said owner or applicant an opportunity to show cause before said Comptroller, or his duly authorized representative, why such action should not be taken. Said notice shall be in writing and may be mailed by United States registered mail to said owner or applicant, at his last known address, or may be delivered by a representative of the Comptroller to said owner or applicant, and no other notice shall be necessary. The Comptroller may prescribe his own rules and procedure and evidence for such hearings.

(c) If, after said hearing or opportunity to be heard, the permit is cancelled by the Comptroller, or his duly authorized representative, all taxes which have been collected or which have accrued, although said

taxes are not then due and payable to the State, except by the provisions of this Article, shall become due and payable concurrently with the cancellation of such permit, and the permittee shall forthwith make a report covering the period of time not covered by the preceding reports filed by said permittee, and ending with the date of cancellation and shall remit and pay to the State of Texas all taxes, which have been collected and which have accrued from the sale, use or distribution of items taxable under this Chapter in this State.

After being given notice of any such order of cancellation, it shall be unlawful for any person to continue to operate his business under any such cancelled permit.

(d) An appeal from any order of the Comptroller, or his duly authorized representative, cancelling or refusing the issuance, extension, or reinstatement of any permit may be taken to the District Court of Travis County, Texas, by the aggrieved permittee or applicant. The trial shall be de novo under the same rules as ordinary civil suits with the following exceptions, which shall be considered literally, viz: (1) all appeals shall be perfected and filed within thirty (30) days after the effective date of the order, decision, or ruling of the Comptroller or his duly authorized representative; (2) such proceedings shall have precedence over all other causes of a different nature; (3) all cases shall be tried within thirty (30) days from the filing thereof; (4) the order, decision, or ruling of the Comptroller, or his duly authorized representative, may be suspended or modified by the court pending a trial on the merits.

#### Art. 20.17 Certification of Records and Documents

(a) If any retailer fails or refuses to collect and remit or to pay to the Comptroller any tax, penalties, or interest within the time and manner provided by this Chapter, and it becomes necessary to bring suit or to intervene in any manner for the establishment or collection of said claim, in any judicial proceedings, any report filed in the office of the Comptroller by such retailer or his representative, or a certified copy thereof certified to by the Comptroller or Chief Clerk, showing the amount of sales of items taxable under this Chapter by such retailer or his representative, on which such tax, penalties, or interest have not been remitted or paid to the State or any audit made by the Comptroller or his representatives, from any books or other records required to be kept or that may be kept by said retailer, when signed and sworn to by such representative as being made from said books and records of said retailer or from any books or records of any person from whom such retailer has bought, received, delivered or sold items taxable under this Chapter, or from the books and records of any transportation agency, who has transported any of said items, such report or audit shall be admissible in evidence in such proceedings, and shall be prima facie evidence of the contents thereof; provided, however, that the prima facie presumption of the correctness of said report or audit may be overcome, upon trial, by evidence adduced by said retailer.

(b) A certificate under the seal of the Comptroller executed by said Comptroller or his Chief Clerk, setting forth the terms of any order, rule, regulation, bond or other instrument, referred to in this Chapter, and that the same had been adopted, promulgated and published or executed and filed with the Comptroller, and was in force and effect at any date or during any period specified in such certificate, shall be prima facie evidence of all such facts and such certificates shall be admitted in

evidence in any action, civil or criminal, involving such order, rule, and regulation, and the publication thereof, without further proof of such promulgation, adoption or publication, and without further proof of its contents and the same provision shall apply to any bond or other instrument referred to herein.

#### **Art. 20.18 Penalties**

(a) If any person affected by this Chapter (1) shall fail to pay to the State of Texas any tax due and owing under the provisions of this Chapter; or (2) shall fail to keep for the period of time provided herein any books or records required to be kept; or (3) shall mutilate, destroy, secrete, or remove from this State, any such books or records; or (4) shall refuse to permit the Comptroller, the Attorney General, or their authorized representative to inspect and examine any books or records, incident to the conduct of his business that may be kept; or (5) shall make, deliver to, and file with the Comptroller a false or incomplete return or report; or (6) shall refuse to permit the Comptroller, or his authorized representatives, to inspect any premises where items taxable under this Chapter are produced, made, assembled, stored, transported, sold, or offered for sale or exchange; or (7) shall fail to make and deliver to the Comptroller any return or report required herein to be made and filed or (8) shall fail or refuse to comply with any provision of this Chapter or shall violate the same; or (9) shall fail to comply with any rule and regulation promulgated hereunder by the Comptroller, or violate the same, he shall forfeit to the State of Texas as a penalty the sum of not less than Twenty-Five Dollars (\$25) nor more than Five Hundred Dollars (\$500). Each day's violation shall constitute a separate offense and incur another penalty, which, if not paid shall be recovered in a suit by the Attorney General in a court of competent jurisdiction in Travis County, Texas, or any other court of competent jurisdiction having venue under existing venue Statutes. Provided that in addition to the penalties shown, if any retailer does not make remittance for any taxes collected, or pay any taxes due the State of Texas by said retailer, within the time herein prescribed, said retailer shall forfeit to the State ten per cent (10%) of the amount due. All past due taxes and penalties shall draw interest at the rate of six per cent (6%) per annum.

(b) The venue of any suit, injunction, or other proceeding at law or in equity available for the establishment or collection of any claim for delinquent taxes, penalties, or interest accruing hereunder and the enforcement of the terms and provisions of this Chapter, shall be in a court of competent jurisdiction, in Travis County, Texas, or in any other court having venue under existing venue Statutes.

#### **Art. 20.19 Allocation of Revenues**

All the revenues derived from the taxes and fees imposed by this Chapter shall be placed in the General Revenue Fund of this State.

#### **Art. 20.20 Additional Penalties**

(a) Whoever shall make a retail sale, distribution, or use of any item taxable under this Chapter upon which a tax is required to be paid without then and there holding a valid retailer's permit issued by the Comptroller, or (b) whoever as a retailer shall fail or refuse to make and deliver to the Comptroller a report containing the information required to be made and delivered to said Comptroller, or, (c) whoever shall knowingly make and deliver to said Comptroller any false or incomplete

report required to be made and delivered to the Comptroller by a retailer, or (d) whoever as a retailer shall fail or refuse to keep in Texas for the period of time required any books and records required to be kept by a retailer, or (e) whoever shall knowingly make any false entry or shall willfully fail to make entry in any books and records required to be kept by a retailer, shall be guilty of a misdemeanor and upon conviction, shall be punished by confinement in the county jail for not less than one (1) month nor more than one (1) year or by a fine of not less than One Hundred Dollars (\$100), or more than Five Thousand Dollars (\$5,000) or by both such fine and imprisonment. In addition to the foregoing penalties, it is herein provided that a misdemeanor conviction for any of the above-named offenses shall automatically forfeit the right of said convicted person to obtain a permit as a retailer of any item taxable under this Chapter for a period of six (6) months from the date of such conviction.

Any person who shall violate, fail or refuse to comply with any provision of this Chapter for which no penalty is provided elsewhere herein, or shall violate, or fail or refuse to comply with any rule or regulation duly promulgated by the Comptroller, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200).

## CHAPTER 21

### ADMISSIONS TAX

#### Art.

- 21.01 Reports Required
- 21.02 Tax Imposed
- 21.03 Records Required
- 21.04 Penalties

#### Art. 21.01 Reports Required

Every person, firm, association of persons, or corporation owning or operating any place of amusement which charges a price or fee for admission, including exhibitions in theaters, motion picture theaters, opera halls, and including horse racing, dog racing, motorcycle racing, automobile racing, and like contests and exhibitions, and including dance halls, night clubs, skating rinks, and any and all other places of amusements not prohibited by law, shall file with the Comptroller a quarterly report on the twenty-fifth day of January, April, July and October for the quarter ending on the last day of the preceding month; said report shall show the gross amount received and the price or fee for admission; provided, however, that the report herein required shall be made upon the day following each amusement, exhibition, entertainment or contest, when such amusement, exhibition, entertainment or contest is not held continuously at a regular fixed place or establishment; and further provided, however, no tax shall be levied under this Chapter on any admission collected for dances, moving pictures, operas, plays and musical entertainments, all the proceeds of which inure exclusively to the benefit of State, religious, educational or charitable institutions, societies, or organizations, if no part of the net earnings thereof inure to the benefit of any private stockholder or individual or for any type of exhibition or amusement conducted by and for which all of the net proceeds inure to the benefit of a nonprofit corporation organized and chartered under the laws

of the State of Texas, for the purpose of encouraging agriculture by the maintenance of public fairs and exhibitions of livestock; and provided further, that entertainments such as motion pictures, operas, plays and like amusements held at a fixed and regular established motion picture theater where the admission charge is less than One Dollar and One Cent (\$1.01) per person, and where no tax is due hereunder, shall be relieved from the filing of a report and the payment of a tax levied under the provisions of this Chapter. Said person, firm, association of persons, or corporation, at the time of making such report shall pay to the Treasurer of this State a tax in rates and amounts as hereinafter provided.

#### Art. 21.02 Tax Imposed

(1) There is hereby levied a tax of one cent (1¢) on each ten cents (10¢) or fractional part thereof paid as admission to entertainments such as motion pictures, operas, plays and like amusements held at places other than at a fixed and regularly established motion picture theater, where the admission charged is in excess of fifty-one cents (51¢) per person.

(2) There is hereby levied on each admission to entertainments such as motion pictures, operas, plays and like amusements held at a fixed or regularly established motion picture theater, where the admission charged is in excess of One Dollar and Five Cents (\$1.05) and not more than One Dollar and Fifteen Cents (\$1.15) a tax of one cent (1¢); and where the admission charged is in excess of One Dollar and Fifteen Cents (\$1.15) a tax of two cents (2¢) plus one cent (1¢) on each ten cents (10¢) or fractional part thereof in excess of One Dollar and Twenty-five Cents (\$1.25).

(3) There is hereby levied a tax of one cent (1¢) on each ten cents (10¢) or each fractional part thereof paid as admission to horse racing, dog racing, motorcycle racing, automobile racing, and like mechanical or animal contests and exhibitions.

(4) There is hereby levied a tax of one cent (1¢) on each ten cents (10¢) or a fractional part thereof paid as admission to dance halls, night clubs, skating rinks, and any and all other like places of amusements, contests, and exhibitions where the admission charged is in excess of fifty-one cents (51¢).

(5) There is hereby levied on the amounts paid for admission by season ticket, subscription, or lease for admission to any place of amusement, a tax equivalent to ten per centum (10%) of the amount paid therefor, provided a single admission to the place of amusement would be subject to taxation under the foregoing provisions.

(6) The taxes herein levied shall not apply to complimentary tickets and passes for which no admission charge is collected.

#### Art. 21.03 Records Required

Every person, firm, association of persons, or corporation who operates any place of amusement as designated in this Chapter upon which an admission tax is due shall make and keep records in Texas at Headquarters office, or if an itinerant producer the place where records are to be kept shall be at the address shown on remittance report if outside the boundaries of Texas, or at a place to be named on said remittance report if to be kept in Texas, for a period of two (2) years. Said records shall correctly reflect (1) the date of event for which a ticket of admission was required, (2) the value of each ticket of admission, (3) number of patrons admitted by each ticket of admission, and (4) if admitted gratuitously, the number of patrons so admitted. Said records shall be open to the in-

spection of the Comptroller and the Attorney General, or their duly authorized agents. If any person, firm, association of persons, or corporation shall fail to keep such records or shall refuse to allow the inspection of such records as above provided for, such person, firm, association of persons, or corporation shall forfeit to the State of Texas as a penalty not less than Twenty-five Dollars (\$25) nor more than One Thousand Dollars (\$1,000) for each violation, and each violation shall constitute a separate offense. The venue for the collection of such penalties by suit shall be in Travis County, Texas.

#### Art. 21.04 Penalties

(1) In the event any person, firm, association of persons, or corporation who operates any place of amusement as designated in this Chapter upon which an admission tax is due shall fail or refuse to pay said tax to the Treasurer of this State on or before the date provided in this Chapter, he shall forfeit to the State of Texas not less than Twenty-five Dollars (\$25) nor more than One Hundred Dollars (\$100) for each violation, and each day's delinquency shall constitute a separate offense. Venue for the collection of such penalties by suit shall be in Travis County, Texas.

(2) The State of Texas shall have a prior lien for all delinquent taxes and penalties provided for in this Chapter on all property used by the owner or operator of any place of amusement as designated in this Chapter, and the Attorney General of the State of Texas may file suit for the collection of such tax and penalties in any court of competent jurisdiction in Travis County, Texas, and for the foreclosure of such lien, and may enjoin the operation of any such business until such taxes and penalties are paid.

(3) Any person managing or controlling any place of amusement required to file a report or keep records as provided in this Chapter, who shall fail or refuse to file such report on the date provided in this Chapter, or make and keep such records, shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than Twenty-five Dollars (\$25) nor more than One Hundred Dollars (\$100) and such punishment shall be in addition to the civil penalties herein provided for. The venue for such prosecutions is hereby conferred upon the Courts of Travis County, Texas.

## CHAPTER 22

### SEVERANCE BENEFICIARY TAX

#### Art.

- 22.01 Levy of tax; rate and calculation; payment
- 22.02 Definitions
- 22.03 Erroneous payment; failure to pay tax
- 22.04 Reports and investigations; rules and regulations; administration of chapter
- 22.05 Suits against delinquents for injunction
- 22.06 Penalties; lien of state
- 22.07 Evidence in suit by state; reports; transfer of lease
- 22.08 Nonliability of producer
- 22.09 Nonseverability clause

**Art. 22.01 Levy of tax; rate and calculation; payment**

(1) In addition to the occupation tax on producers of natural gas levied by Chapter 3 of this Act, there is hereby levied an occupation tax on the occupation or privilege of obtaining the production of Dedicated Gas within this State, and on the business or occupation of producing such gas, to be known as the "Severance Beneficiary Tax," and to be computed as follows:

The rate of said tax shall be one and one half per cent (1½%) of the market value of gas as and when produced.

In calculating the tax herein levied there shall be excluded: (1) gas injected into the earth in this State unless sold for such purpose; (2) gas produced from oil wells with oil and lawfully vented or flared; (3) gas used for lifting oil unless sold for such purposes; (4) gas used in connection with the irrigation of lands in Texas.

(2) The market value of gas subject to the tax hereby levied shall be the value thereof at the mouth of the well except in cases where liquid hydrocarbons are extracted or recovered therefrom in this State, in which event the market value shall be the value of the residue gas remaining after such extraction or removal, and no additional tax on liquid hydrocarbons extracted or recovered from gas is levied by this Chapter.

(3) The tax hereby levied is an occupation tax on the occupation or privilege of obtaining the production of "Dedicated Gas" and on the business or occupation of producing such gas as a "Severance Beneficiary," as these terms are defined herein.

(4) The tax hereby levied shall be a liability of the producer of gas, but if produced for or sold to a severance beneficiary other than the producer, the tax shall be the liability of and paid by the severance beneficiary. It is the intention of this Article that the producer shall be required to pay the tax hereby levied only if the gas is produced for his own use or independent sale and not under any prior contract to produce for sale to another. The provisions in this paragraph shall not be severable and producers shall not be liable for any tax under the provisions of this Article unless severance beneficiaries other than producers are also liable as provided under the terms hereof. If the tax hereby levied is held invalid as to any class of severance beneficiaries, other than governmental entities or organizations held to be exempt from taxation, then it shall not be valid as to other severance beneficiaries or producers, and the non-severability provisions of this Article shall prevail over the general severability clause in Section 5 of this Act. It shall be the duty of each producer to keep accurate records in Texas of all gas produced and to make monthly reports under oath as hereinafter provided.

(5) The first purchaser of gas shall pay the tax on gas purchased, and if he is not the severance beneficiary, shall collect the tax so paid from the severance beneficiary, making such payments so collected to the Comptroller of Public Accounts by legal tender or cashier's check payable to the State Treasurer. Such moneys so collected for the payment of this tax shall be held by the purchaser in trust for the use and benefit of the State of Texas and shall not be commingled with any other funds held by such said purchaser, and shall be remitted to the State Treasurer in accordance with the terms and provisions of this Chapter; and it shall be the duty of each such purchaser to keep accurate records in Texas of all such gas purchased or obtained as hereinafter provided and to make and deliver to the Comptroller verified monthly reports thereof. If there is no first purchaser or severance beneficiary other than the producer, then the producer shall pay to the Comptroller the tax levied by this Chapter.



(6) The tax herein levied shall be due and payable at the office of the Comptroller at Austin on the last day of the calendar month, based on the amount of gas produced and saved during the preceding calendar month, and on or before said date each producer and severance beneficiary and first purchaser shall make and deliver to the Comptroller a verified report on forms prescribed by the Comptroller showing the gross amount of gas produced and purchased, less the exclusions and at the pressure base set out herein, upon which the tax herein levied accrues, together with details as to amounts of gas, from what leases said gas was produced, and the correct name and address of the severance beneficiary, and first purchaser and such other information as the Comptroller may desire, such report to be accompanied by legal tender or cashier's check payable to the State Treasurer for the proper amount of taxes herein levied.

(7) Provided, that unless such payment of tax on all gas produced during any month or fractional part thereof shall be made on or before the date due as hereinabove specified, such payment shall become delinquent and a penalty of ten per cent (10%) of the amount of the tax shall be added; such tax and penalty shall bear interest at the rate of six per cent (6%) per annum from date due until date paid.

#### Art. 22.02 Definitions

(1) For the purpose of this Chapter, "Producer" shall mean any person (other than a non-operating royalty owner) owning, controlling, managing, or leasing any gas well or land producing gas, and any person who produces in any manner any gas by taking it from the earth or waters in this State.

(2) "First Purchaser" shall mean any person purchasing gas from the producer.

(3) "Dedicated Gas" shall include all gas withdrawn from the lands or waters of this State for the use and benefit of a severance beneficiary.

(4) "Severance Beneficiary" shall mean any person for whose use and benefit gas is withdrawn from the land or waters of this State. Where a contract in writing confers upon one person the prior right to take title to gas produced from particular lands, leases or reservoirs in this State and other persons are obligated to maintain and operate wells, gathering or dehydration facilities or to process or treat such gas so as to make delivery thereof as required by such contract, it shall be conclusively presumed (i) that by such contract gas in place under lands or leases or within such reservoirs has been pledged, dedicated and set apart to satisfy such contract and (ii) that any gas which is delivered and accepted under such contract has been withdrawn from the lands and waters of this State for the use and benefit of the person taking title to such gas by virtue of such contract. If there be more than one such contract covering the same gas, the tax hereby levied shall be the liability of the person who ultimately takes title to the gas in this State by virtue of such contracts. In all other instances, it shall be conclusively presumed that gas when withdrawn from the lands and waters of this State is withdrawn for the use and benefit of the person taking it from the land or waters in this State and having the original possessory right thereto as and when the same is produced.

(5) "Gas" shall mean natural and casinghead gas or other gas taken from the earth or waters, regardless of whether produced from a gas well or from a well also productive of oil, distillate, and/or condensate, or other products.

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

(6) The term "Casinghead Gas" shall mean any gas and/or vapor indigenous to an oil stratum and produced from such stratum with oil.

(7) "Report" shall mean any report required to be furnished in this Chapter or that may be required by the Comptroller in the administration of its provisions.

(8) "Person" shall include any person, firm, concern, receiver, trustee, executor, administrator, agent, institution, association, partnership, company, corporation, and persons acting under declarations of trust as well as the trustees acting under such declarations of trust.

(9) "Production" or "Total Gas Produced" shall mean the total gross amount of gas produced. The tax imposed by this Chapter shall be measured or determined by meter readings showing one hundred per cent (100%) of the full volume expressed in cubic feet.

(10) For the purposes of this Chapter, the term "Cubic Foot of Gas" or "Standard Cubic Foot of Gas" means the volume of gas (including natural and casinghead) contained in one (1) cubic foot of space at a standard pressure base and at a standard temperature base. The standard pressure base shall be 14.65 pounds per square inch absolute, and the standard temperature base shall be sixty (60) degrees Fahrenheit. Whenever the conditions of pressure and temperature differ from the above standard, conversion of the volume from these conditions to the standard conditions shall be made in accordance with the Ideal Gas Laws, corrected for deviation.

(11) "Comptroller" shall mean Comptroller of Public Accounts of the State of Texas.

#### **Art. 22.03 Erroneous payment; failure to pay tax**

(1) When it shall appear that a taxpayer to whom the provisions of this Chapter shall apply has erroneously paid more taxes than were due during any tax-paying period either on account of a mistake of fact or law, it shall be the duty of the State Comptroller to credit the total amount of taxes due by such taxpayer for the current period with the total amount of taxes so erroneously paid.

(2) The failure of a first purchaser or a severance beneficiary to pay the tax levied by this Chapter shall not relieve any subsequent purchaser from the payment of same, and it shall be the duty of every person purchasing gas produced in Texas to satisfy himself or itself that the tax on said gas has been or will be paid by the person primarily liable therefor.

#### **Art. 22.04 Reports and investigations; rules and regulations; administration of chapter**

The Comptroller shall employ auditors and/or other technical assistants for the purpose of verifying reports and investigating the affairs of producers, purchasers, and severance beneficiaries to determine whether the tax is being properly reported and paid. He shall have the power to enter upon the premises of any taxpayer liable for a tax under this Chapter, and any other premises necessary in determining the correct tax liability, and to examine, or cause to be examined, any books or records of any persons, subject to a tax under this Chapter, and to secure any other information directly or indirectly concerned in the enforcement of this Chapter; and to promulgate and enforce, according to law, rules and regulations pertinent to the enforcement of this Chapter, which shall have the full force and effect of law. Before any division or allotment

of the occupation tax collected under the provisions of this Chapter is made, one half ( $\frac{1}{2}$ ) of one per cent (1%) of the gross amount of said tax shall be set aside in the Treasury for the use of the Comptroller in the administration and enforcement of the provisions of this Chapter; and so much of the said proceeds of one half ( $\frac{1}{2}$ ) of one per cent (1%) of the occupation tax paid monthly as may be needed in such administration and enforcement is hereby allocated for such purpose, subject however to appropriation by the Legislature.

**Art. 22.05 Suits against delinquents for injunction**

In the event any severance beneficiary or first purchaser of gas in this State shall become delinquent in the payment of the proper taxes herein imposed, or fails to file required reports with the Comptroller, the Attorney General by a suit in the name of the State of Texas shall have the right to enjoin such persons from producing, purchasing, delivering or taking delivery of gas until the delinquent tax is paid or said reports filed, and the venue of any such suit for injunction is hereby fixed in Travis County.

**Art. 22.06 Penalties; lien of state**

Severance beneficiaries, first purchasers and producers shall be subject to a penalty of not less than One Hundred Dollars (\$100) nor more than One Thousand Dollars (\$1,000) for failure or omission to keep the records required herein or for the violation of any of the other provisions hereof, and each day's violation shall constitute a separate offense. The State shall have a prior lien for all delinquent taxes, penalties and interest on all property and equipment used by a severance beneficiary or first purchaser of gas in his business of producing gas or purchasing gas, and if any severance beneficiary or first purchaser of gas shall fail to remit the proper taxes, penalties, and interest due, or any of them, the Comptroller may employ auditors or other persons to ascertain the correct amount due, and the severance beneficiary and first purchaser of gas shall be liable, as additional penalty, for the reasonable expenses or the reasonable value of such services of representatives of the Comptroller incurred in such investigation and audit; provided, that all funds collected for audits and examinations shall be placed in the Natural and Casinghead Gas Audit Fund in the State Treasury and shall constitute a revolving fund which may be used from time to time by the Comptroller in making such audits in addition to the general appropriation made for such purposes, and all of said funds to be placed in said Natural and Casinghead Gas Audit Fund are hereby allocated for such purpose. The Attorney General shall file suit in the name of the State of Texas for all delinquent taxes, penalties, and other amounts due, and for the enforcement of all liens under this law; and the venue of any such suit is hereby fixed in Travis County.

**Art. 22.07 Evidence in suit by state; reports; transfer of lease**

(1) If any severance beneficiary or first purchaser of gas fails or refuses to pay any tax, penalty, or interest within the time and manner provided by this Chapter and it becomes necessary to bring suit or to intervene in any manner for the establishment or collection of said claim in any judicial proceedings, any report filed in the office of the Comptroller by such severance beneficiary or first purchaser or representative of said severance beneficiary or purchaser, or a certified copy thereof

certified to by the Comptroller of Public Accounts showing the amount of gas produced on which tax, penalties or interest have not been paid, or any audit made by the Comptroller or his representative from the books of said severance beneficiary or purchaser when filed and sworn to by such representative as being made from the records of said severance beneficiary or first purchaser, such report or audit shall be admissible in evidence in such proceedings and shall be prima facie evidence of the contents thereof; provided, however, that the incorrectness of said report or audit may be shown; provided further, that such report or audit may be admitted in evidence only against the party by or from whom it was made.

(2) In the event the Attorney General shall file suit or claim for taxes, provided for in the foregoing, and attach or file as an exhibit any report or audit of said severance beneficiary or first purchaser, and an affidavit made by the Comptroller or his representative that the taxes shown to be due by said report or audit are past due and unpaid, and that all payments and credits have been allowed, then, unless the party resisting the same shall file an answer in the same form and manner as required by Article 3736, Revised Civil Statutes of Texas of 1925, as amended by Chapter 239, Acts of the Regular Session of the Forty-second Legislature, said audit or report shall be taken as prima facie evidence thereof, and the proceedings of said Chapter are hereby made applicable to suits to collect taxes hereunder.

(3) On notice from the State Comptroller, it shall be unlawful for any person to produce or remove any gas from any lease in this State whenever the severance beneficiary, first purchaser or producer has failed to file reports as required under the provisions of this Chapter.

(4) Whenever any lease producing gas changes hands, it shall be the duty of the owner or operator of said lease to note on his last report that said lease has been sold or transferred, showing the effective date of said change and the name and address of the person who will operate said lease and be responsible for the filing of reports provided for in this Chapter. It further shall be the duty of the new owner or operator of said lease to note on his first report that said lease has been acquired, showing the effective date of said change and the name and address of the person formerly owning and/or operating said lease.

#### **Art. 22.08 Nonliability of producer**

The tax hereinabove imposed shall never be the liability or the obligation of the producer, except in those cases where the producer is the severance beneficiary as herein defined.

#### **Art. 22.09 Nonseverability clause**

The provisions of this Chapter are hereby declared to be nonseverable; and if this Chapter is declared invalid by a final judgment of a court of competent jurisdiction as to any severance beneficiary, it shall be invalid from the beginning as to the producer and all other severance beneficiaries. The provisions of this Article shall prevail over the provisions of the general severability clause in Section 5 of this Act as to this Chapter.

## CHAPTER 23

## HOTEL OCCUPANCY TAX

## Art.

- 23.01 Definitions
- 23.02 Levy of tax; rate; exceptions
- 23.03 Collection
- 23.04 Reports
- 23.05 Rules and regulations
- 23.06 Penalties

## Art. 23.01 Definitions

The following words, terms and phrases are, for the purposes of this Chapter, except where the context clearly indicates a different meaning, defined as follows:

(a) "Hotel" shall mean any building or buildings in which the public may, for a consideration, obtain sleeping accommodations. The term shall include hotels, motels, tourist homes, houses or courts, lodging houses, inns, rooming houses, or other buildings where rooms are furnished for a consideration, but "hotel" shall not be defined so as to include hospitals, sanitariums, or nursing homes.

(b) "Consideration" shall mean the cost of the room in such hotel and shall not include the cost of any food served or personal services rendered to the occupant of such room not related to the cleaning and readying of such room for occupancy.

(c) "Occupancy" shall mean the use or possession, or the right to the use or possession of any room or rooms in a hotel for any purpose.

(d) "Occupant" shall mean anyone, who, for a consideration, uses, possesses, or has a right to use or possess any room or rooms in a hotel under any lease, concessions, permit, right of access, license, contract or agreement.

(e) "Person" shall mean any individual, company, corporation, or association owning, operating, managing or controlling any hotel.

(f) "Comptroller" shall mean the Comptroller of Public Accounts of the State of Texas.

(g) "Quarterly Period" shall mean the regular calendar quarters of the year, the first quarter being composed of the months of January, February and March, the second quarter being the months of April, May and June, the third quarter being the months of July, August and September, and the fourth quarter being the months of October, November and December.

(h) "Permanent Resident" shall mean any occupant who has or shall have the right to occupancy of any room or rooms in a hotel for at least thirty (30) consecutive days during the current calendar year or preceding year.

## Art. 23.02 Levy of tax; rate; exceptions

(a) There is hereby levied a tax upon the cost of occupancy of any room or space furnished by any hotel where such cost of occupancy is at the rate of Two Dollars (\$2) or more per day, such tax to be equal to three per cent (3%) of the consideration paid by the occupant of such room to such hotel.

(b) No tax shall be imposed hereunder upon a permanent resident.

(c) No tax shall be imposed hereunder upon a corporation or association organized and operated exclusively for religious, charitable or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

#### **Art. 23.03 Collection**

Every person owning, operating, managing or controlling any hotel, shall collect the tax imposed in Article 23.02 hereof for the State of Texas.

#### **Art. 23.04 Reports**

On the last day of the month following each quarterly period, every person required in Article 23.03 hereof to collect the tax imposed herein shall file a report with the Comptroller showing the consideration paid for all room occupancies in the preceding quarter, the amount of tax collected on such occupancies, and any other information as the Comptroller may reasonably require. Such person shall pay the tax due on such occupancies at the time of filing such report.

#### **Art. 23.05 Rules and regulations**

The Comptroller shall have the power to make such rules and regulations as are necessary to effectively collect the tax levied herein, and shall upon reasonable notice have access to books and records necessary to enable him to determine the correctness of any report filed as required by this Chapter and the amount of taxes due under the provisions of this Chapter.

#### **Art. 23.06 Penalties**

If any person required by the provisions of this Chapter to collect the tax imposed herein, make reports as required herein, and pay to the Comptroller the tax imposed herein, shall fail to collect such tax, file such report, or pay such tax, or if such person shall file a false report, such person shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than One Hundred Dollars (\$100) nor more than One Thousand Dollars (\$1,000).

CHAPTER 24

ALLOCATION OF TAX REVENUES

Art.

24.01 Enforcement and Administration of Funds; Allocation

Art. 24.01 Enforcement and administration of funds; allocation

All revenues collected from the taxes imposed by the Chapters of Title 122a, after deduction of the portion allocated for collection, enforcement, and administration purposes by various Chapters of such Title, shall be allocated as follows:

CHAPTER OR ARTICLE OF THIS TITLE LEVYING THE TAX	PORTION ALLOCATED TO THE AVAILABLE SCHOOL FUND	PORTION ALLOCATED TO THE OMNIBUS TAX CLEARANCE FUND (Established by Acts 1941, 47th Leg., Ch. 184, as amended)	PORTION ALLOCATED TO THE GENERAL REVENUE FUND
Chapter 2 (Poll Tax)	$\frac{3}{4}$		$\frac{1}{3}$
Chapter 3 (Natural Gas Tax)	$\frac{1}{4}$	$\frac{3}{4}$	
Chapter 4 (Oil Production Tax)	$\frac{1}{4}$	$\frac{3}{4}$	
Chapter 5 (Sulphur Tax)	$\frac{1}{4}$	$\frac{3}{4}$	
Chapter 6 (Motor Vehicle Sales and Use Tax)	$\frac{1}{4}$	$\frac{3}{4}$	
Chapter 7 (Cigarette Tax Article 7.02)	18.75%		81.25%
(Cigarette Tax Article 7.06)			All
Chapter 8 (Tobacco Products Tax)			All
Chapter 9 Motor Fuel (Gasoline)		Allocated as provided in Article 9.25, Chapter 9, of this Act.	
Chapter 10 (Special Fuels Tax)		Allocated as provided in Article 10.22, Chapter 10, of this Act.	
Chapter 11 (Miscellaneous Gross Receipts Taxes)	$\frac{1}{4}$	$\frac{3}{4}$	
Chapter 12 (Franchise Tax)			All
Chapter 13 (Coin-Operated Machines Tax)	$\frac{1}{4}$	$\frac{3}{4}$	
Chapter 14 (Inheritance Tax)			All

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

CHAPTER OR ARTICLE OF THIS TITLE LEVYING THE TAX	PORTION ALLOCATED TO THE AVAILABLE SCHOOL FUND	PORTION ALLOCATED TO THE OMNIBUS TAX CLEARANCE FUND (Established by Acts 1941, 47th Leg., Ch. 184, as amended)	PORTION ALLOCATED TO THE GENERAL REVENUE FUND
Chapter 15 (Additional Inheritance Tax)			All
Chapter 16 (Stock Transfer Tax)	$\frac{1}{4}$	$\frac{3}{4}$	
Chapter 17 (Store and Exempt Store Tax)	$\frac{1}{4}$		$\frac{3}{4}$
Chapter 18 (Cement Production Tax)	$\frac{1}{4}$	$\frac{3}{4}$	
Chapter 19 (Misc. Occupation Taxes including Oil Well Servicing)	$\frac{1}{4}$	$\frac{3}{4}$	
Chapter 20 (Misc. Excise Taxes)			All
Chapter 21 (Admissions Tax)	$\frac{1}{4}$	$\frac{3}{4}$	
Chapter 22 (Severance Beneficiary Tax)	$\frac{1}{4}$	$\frac{3}{4}$	
Chapter 23 (Hotel Occupancy Tax)			All

Section 2. (1) Section 21 of Article 1, Chapter 467, Acts of the Second Called Session of the Forty-fourth Legislature as last amended by Section VIII of Chapter 402, Acts of the Fifty-second Legislature, Regular Session, 1951, compiled as Article 666—21, Vernon's Annotated Penal Code of Texas,<sup>1</sup> shall be and is hereby amended so as to read hereafter as follows:

"Section 21.

"There is hereby levied and imposed on the first sale in addition to the other fees and taxes levied by this Act the following:

"(a) A tax of One Dollar and Sixty-eight Cents (\$1.68) per gallon on each gallon of distilled spirits, providing the minimum tax on any package of distilled spirits shall be \$0.105.

"(b) A tax of \$0.132 on each gallon of vinous liquor that does not contain over fourteen per cent (14%) of alcohol by volume.

"(c) A tax of \$0.264 on each gallon of vinous liquor containing more than fourteen per cent (14%) and not more than twenty-four per cent (24%) of alcohol by volume.

"(d) A tax of \$0.330 on each gallon of artificially carbonated and natural sparkling vinous liquor.

"(e) A tax of \$0.660 on each gallon of vinous liquor containing alcohol in excess of twenty-four per cent (24%) by volume.

1. Vernon's Ann.P.C. art. 666—21.



“(f) A tax of \$0.165 on each gallon of malt liquor containing alcohol in excess of four per cent (4%) by weight.

“The term ‘first sale’ as used in Article I of this Act shall mean and include the first sale, possession, distribution, or use in this State of any and all liquor refined, blended, manufactured, imported into, or in any other manner produced or acquired, possessed, or brought into this State.

“The tax herein levied shall be paid by affixing a stamp or stamps on each bottle or container of liquor. Said stamps shall be affixed in strict accordance with any rule or regulation promulgated in pursuance of this Act; provided, however, any holder of a permit as a retail dealer as that term is defined herein shall be held liable for any tax due on any liquor sold on which the tax has not been paid.

“It shall be the duty of each person who makes a first sale of any liquor in this State to affix said stamps on each bottle or container of liquor and to cancel the same in accordance with any rule and regulation of the Board. The Board shall have power to relax the foregoing provision when in its judgment it would be impracticable to require the affixing of such stamp on the bottle or container, irrespective of any other provision of this Act. And any person, persons, or association who violates any portion of this Section shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than One Hundred Dollars (\$100) nor more than One Thousand Dollars (\$1,000), or by imprisonment in the county jail for not less than thirty (30) days nor more than one (1) year. Every holder of a permit authorizing the wholesaling of liquor, upon receipt of a shipment of liquor for sale within this State, under the provisions of this Act, shall prepare and furnish such information and such reports as may be required by rules and regulations of the Board. Any person authorized to export liquor from this State having in his possession any liquor intended for shipment to any place without the State, shall keep such liquors in a separate compartment from that of liquors intended for sale within the State so that the same may be easily inspected and shall attach to each such package of liquor so intended for shipment without the State a stamp of the kind and character that shall be required by proper rule or regulation denoting that the same is not intended for sale within the State. When such liquors are so kept and so stamped, no tax on account thereof shall be charged. For defraying the expenses thereof, a charge of twenty-five cents (25¢) shall be made for every such stamp, except that a charge of ten cents (10¢) shall be made for each such stamp placed on vinous or malt liquors of twenty-four per cent (24%) alcoholic content or less. All such permittees authorized to transport liquor beyond the boundaries of this State shall furnish to the Board duplicate copies of all invoices for the sale of such liquors, within twenty-four (24) hours after such liquors have been removed from their place of business.”

(2) It is further provided that such portion of the tax provided by the amendment to Section 21 of the Texas Liquor Control Act by Subsection (1) of Section 2 of this Act which represents an increase in the tax rate on liquors shall apply and attach to all liquor which shall be in the possession of any person for the purpose of sale. Every person having possession of any liquor for the purpose of sale shall on the effective date of this Act render and submit to the Texas Liquor Control Board at Austin, Travis County, Texas, a true and correct sworn inventory of all such liquors, setting forth in detail the size of containers and the quantity thereof and shall attach to such sworn inventory a cashier's check or certified check payable to the State of Texas in an amount equal to the portion of said tax representing an increase in the tax rate on such liquor.

The sworn inventory shall be rendered upon a form to be prescribed and furnished by the Texas Liquor Control Board. The sworn inventory with cashier's check or certified check attached shall be placed in the United States mail, addressed to the Texas Liquor Control Board at Austin, Travis County, Texas, within twenty-four (24) hours after the effective date of this Act, and a true, correct and exact copy thereof must be retained by the person making such report. Failure or refusal to render and submit such inventory and cashier's check or certified check on or before the time specified above or the willful falsification of such inventory shall be deemed sufficient grounds for the cancellation of any permit or license by the Board. The copy of the sworn inventory and the purchaser's copy of the cashier's check or certified check retained by the person making such report shall be evidence of payment of the portion of the tax which represents an increase. The Texas Liquor Control Board is hereby authorized to adopt rules and regulations which may include provisions for the present stamps or stamps of the present denominations, to evidence payment of both the increase in the tax herein levied and the tax heretofore levied in the Texas Liquor Control Act as amended.

Sec. 3. Construction of this Act. With respect to the provisions of this Act which tax transactions subject to taxation by the State prior to the effective date of this Act, this Act shall be considered to be the equivalent of a revision by amendment even though it is in the form of an enactment of new law and repeal of the old law. This Act shall be construed to make a substantive change in the prior law only where the language of this Act manifests a clear intent to make such a change.

Sec. 4. Savings Clause. The repeal of any law by this Act shall not affect or impair any act done or obligation, right, license, permit or penalty accrued or existing under the authority of the law repealed; and such law shall be treated as still remaining in force for the purpose of sustaining any proper action concerning any such obligation, right, license, permit or penalty. Taxes incurred under any law repealed by this Act are an obligation within the meaning of this Section. In addition, any permit or license obtained under any law repealed by this Act shall remain effective for the term and under the conditions prescribed by the repealed law under which the permit or license was granted or issued.

Sec. 5. Severability. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, this invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared severable.

Sec. 6. Appropriation. Whenever any allocation is made by this Act for administration to the collection agency of the State collecting such tax such allocation shall be subject to appropriation by the Legislature; and appropriation by the Legislature of such funds or any part thereof shall be in lieu of the percentages allocated by this Act.

Sec. 7. Repealer. (a) Wherever used in this Section, Article numbers are references to Vernon's Annotated Civil Statutes of Texas except where such Article numbers are designated as Articles of the Revised Civil Statutes of Texas, 1925, or Vernon's Annotated Penal Code of Texas.

(b) The following statutes and acts, together with all laws or parts of laws in conflict herewith, are hereby repealed:

Revised Civil Statutes of Texas, 1925, Article 7046 (Poll Tax) as amended;<sup>2</sup> Article 7071;<sup>3</sup> Article 7066 (Sulphur Tax) as amended;<sup>4</sup>

2. Vernon's Ann.Civ.St. art. 7046.

4. Vernon's Ann.Civ.St. art. 7066.

3. Vernon's Ann.Civ.St. art. 7071

Article 7065<sup>5</sup> and Acts 1941, Forty-seventh Legislature, Regular Session, Chapter 184, Article XVII as amended, compiled as Article 7065b (Motor Fuel Tax);<sup>6</sup> Article 7058 (Express Companies) as amended;<sup>7</sup> Article 7059 (Telegraph Companies) as amended;<sup>8</sup> Article 7060 (Gas, Electric Light, Electric Power and Water Works) as amended;<sup>9</sup> Article 7061 (Collecting Agencies) as amended;<sup>10</sup> Article 7062 (Car Companies) as amended;<sup>11</sup> Article 7063 (Sleeping, Palace or Dining Car Companies) as amended;<sup>12</sup> Article 7068 (Dealers in Pistols) as amended;<sup>13</sup> Article 7069 (Textbook Publishers) as amended;<sup>14</sup> Article 7070 (Telephone Companies) as amended;<sup>15</sup> Articles 7084 through 7097 (Franchise Tax) as amended;<sup>16</sup> Articles 7117 through 7144 (Inheritance Tax) as amended;<sup>17</sup> Article 7057, as amended;<sup>18</sup> Article 7076, as amended;<sup>19</sup> Article 7078, as amended.<sup>20</sup>

Acts 1933, Forty-third Legislature, Regular Session, Chapter 162, Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 9a and 9b as amended and Chapters 6 and 7 of Acts 1939, Forty-sixth Legislature, Regular Session referred to therein as Sections 7a, 8a and 8b of Article 7057a of the Revised Civil Statutes of Texas, 1925, all of which is compiled as Article 7057a of Vernon's Annotated Civil Statutes of Texas<sup>21</sup> and Article 1111a of Vernon's Annotated Penal Code of Texas (Oil Production Tax).<sup>22</sup>

Acts 1931, Forty-second Legislature, Regular Session, Chapter 267, compiled as Article 7047d (Tax on Dealers in Pistols), as amended.<sup>23</sup>

Acts 1933, Forty-third Legislature, Chapter 192, Section 2b, as amended, compiled as Article 7144a, as amended (Additional Inheritance Tax);<sup>24</sup> Acts 1937, Forty-fifth Legislature, Chapter 310, as amended, compiled as Article 7047j;<sup>25</sup> Acts 1950, Fifty-first Legislature, First Called Session, Chapter 2, Article XX, compiled as Article 7057e.<sup>26</sup>

Revised Civil Statutes of Texas, 1925, Article 7047, Section 1 (Itinerant Merchants); Section 2 (Traveling Vendors of Patent Medicines); Section 3 (Itinerant Physicians); Section 5 (Clock Peddlers); Section 6 (Auctioneers); Section 7 (Brokers and Factors); Section 9 (Ship Brokers); Section 10 (Insurance Adjusters); Section 13 (Pawnbrokers); Section 14 (Loan Brokers); Section 15 (Money Lenders); Section 16 (Credit Reporting); Section 21 (Street Car Companies) and Section 23 (Coin-Operated Machines); Section 24 (Circus and Shows); Section 25 (Menageries, Museums, Carnivals); Section 26 (Waxworks); Section 27 (Wrestling Matches and Acrobatic Performances); Section 28 (Sleight-of-Hand Performances); Section 29 (Medicine Shows); Section 30 (Concerts); Section 31 (Rodeos); Section 32 (Baseball Parks); Section 33 (Race Tracks); Section 34 (Skating Rinks); Section 35 (Shooting Gal-

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| 5. Vernon's Ann.Civ.St. art. 7065.  | Rep. | 16. Vernon's Ann.Civ.St. art. 7084-7097. |
| 6. Vernon's Ann.Civ.St. art. 7065b. | Rep. | 17. Vernon's Ann.Civ.St. art. 7117-7144. |
| 7. Vernon's Ann.Civ.St. art. 7058.  |      | 18. Vernon's Ann.Civ.St. art. 7057.      |
| 8. Vernon's Ann.Civ.St. art. 7059.  |      | 19. Vernon's Ann.Civ.St. art. 7076.      |
| 9. Vernon's Ann.Civ.St. art. 7060.  |      | 20. Vernon's Ann.Civ.St. art. 7078.      |
| 10. Vernon's Ann.Civ.St. art. 7061. |      | 21. Vernon's Ann.Civ.St. art. 7057a.     |
| 11. Vernon's Ann.Civ.St. art. 7062. |      | 22. Vernon's Ann.P.C. art. 1111a.        |
| 12. Vernon's Ann.Civ.St. art. 7063. |      | 23. Vernon's Ann.Civ.St. art. 7047d.     |
| 13. Vernon's Ann.Civ.St. art. 7068. |      | 24. Vernon's Ann.Civ.St. art. 7144a.     |
| 14. Vernon's Ann.Civ.St. art. 7069. |      | 25. Vernon's Ann.Civ.St. art. 7047j.     |
| 15. Vernon's Ann.Civ.St. art. 7070. |      | 26. Vernon's Ann.Civ.St. art. 7057e.     |

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

leries); Section 36 (Nine and Ten Pin Alleys); Section 37 (Hobby Horses); Section 38 (Dealers in Cannon Crackers); Section 41 (Cement Distributors) as added by Acts 1931, Forty-second Legislature, Chapter 212, Section 1 and as amended by Article XII, Chapter 184, Forty-seventh Legislature, Regular Session, 1941 and by Section XII, Chapter 402, Fifty-second Legislature, Regular Session, 1951, compiled as Subdivision 41a of Article 7047 (Cement Distributors); and Sections 42, 43 and 44 (Administrative Procedures) as all such Sections have been amended.<sup>27</sup>

Acts 1930, Forty-first Legislature, Fifth Called Session, Chapter 35, compiled as Subdivision 22a of Article 7047 (Theaters).<sup>28</sup>

Acts 1941, Forty-seventh Legislature, Regular Session, Chapter 184, Article III as amended by Acts 1951, Fifty-second Legislature, Regular Session, Chapter 402, Section II, compiled as Subdivision 40b of Article 7047 (Sulphur Producers).<sup>29</sup>

Acts 1930, Forty-first Legislature, Fifth Called Session, Chapter 37, compiled as Subdivision 41 of Article 7047 (Textbook Publishers).<sup>30</sup>

Acts 1936, Forty-fourth Legislature, Third Called Session, Chapter 495, Article III, Section 6, as amended, compiled as Article 7047a-19 (Admissions Tax).<sup>31</sup>

Acts 1936, Forty-fourth Legislature, Third Called Session, Chapter 495, Article IV, Sections 10 and 12 and Article V, Section 1, as amended, compiled as Articles 7047f, 7047h and 7047i, (Prizes and Awards Tax).<sup>32</sup>

Acts 1941, Forty-seventh Legislature, Chapter 184, Article X, compiled as Article 7047l (Luxury Excise Tax on Cosmetics and Playing Cards) as amended.<sup>33</sup>

Acts 1955, Fifty-fourth Legislature, Regular Session, Chapter 522, as amended, compiled as Article 7047l-1 (Excise Tax on Radios and Television Sets).<sup>34</sup>

Acts 1931, Forty-second Legislature, Regular Session, Chapter 73, compiled as Article 7047b (Natural Gas Production Tax) as amended.<sup>35</sup>

Acts 1941, Forty-seventh Legislature, Chapter 184, Article VI (Motor Vehicle Retail Sales Tax) as amended, compiled as Article 7047k.<sup>36</sup>

Acts 1935, Forty-fourth Legislature, Regular Session, Chapter 241, as amended, compiled as Article 7047c-1 (Cigarette Tax).<sup>37</sup>

Acts 1935, Forty-fourth Legislature, First Called Session, Chapter 400, as amended, compiled as Vernon's Annotated Texas Penal Code, Article 1111d, (Store and Exempt Store Tax).<sup>38</sup>

Acts 1941, Forty-seventh Legislature, Chapter 184, Article XV, as amended, compiled as Article 7047m (Stock Transfer and Sales Tax).<sup>39</sup>

Acts 1936, Forty-fourth Legislature, Third Called Session, Chapter 495, Article III, Section 4, as amended by Acts 1951, Fifty-second Legislature, Chapter 379, Section 1, as amended by Added Acts 1951, Fifty-

27. Vernon's Ann.Civ.St. art. 7047, subds. 1-3, 5-7, 9, 10, 13-16, 21, 23, 24-38, 41, 41a, 42-44.

28. Vernon's Ann.Civ.St. art. 7047, subd. 22a.

29. Vernon's Ann.Civ.St. art. 7047, subd. 40b.

30. Vernon's Ann.Civ.St. art. 7047, subd. 41.

31. Vernon's Ann.Civ.St. art. 7047a-19.

32. Vernon's Ann.Civ.St. art. 7047f, 7047h and 7047i.

33. Vernon's Ann.Civ.St. art. 7047l.

34. Vernon's Ann.Civ.St. art. 7047l-1.

35. Vernon's Ann.Civ.St. art. 7047b.

36. Vernon's Ann.Civ.St. art. 7047k.

37. Vernon's Ann.Civ.St. art. 7047c-1.

38. Vernon's Ann.P.C. art. 1111d.

39. Vernon's Ann.Civ.St. art. 7047m.

second Legislature, Chapter 380, Section 1, compiled as Articles 7047a—2 through 7047a—18 (Coin-Operated Machines Tax).<sup>40</sup>

Acts 1941, Forty-seventh Legislature, Chapter 184, Article XVI, compiled as Article 7060a (Oilwell Servicing Tax) as amended by Acts 1951, Fifty-second Legislature, Chapter 402, Section XIV; and Acts 1954, Fifty-third Legislature, First Called Session, Chapter 2, Article V, Section 1.<sup>41</sup>

Acts 1941, Forty-seventh Legislature, Chapter 184, Article XIV, Section 1, compiled as Article 7066b (Motor Carriers, etc.) as amended; <sup>42</sup> also Acts 1941, Forty-seventh Legislature, Chapter 389, Section 2, compiled as Article 7066b—1.<sup>43</sup>

Sec. 8. *Effective Date.* This Act shall be effective September 1, 1959.

Sec. 9. *Emergency.* The necessity for revising and rearranging the taxes referred to in this Act and the pressing necessity to realize additional revenue for the State creates an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and the same is hereby suspended, and this Act shall take effect and be in force from and after September 1, 1959, and it is so enacted.

Passed the House, July 24, 1959: Yeas 100, Nays 38; and the House concurred in Senate amendments, July 30, 1959: Yeas 115, Nays 25; passed the Senate, as amended, July 29, 1959: Yeas 29, Nays 2.

Approved Aug. 6, 1959.

Effective Sept. 1, 1959.

40. Vernon's Ann.Civ.St. arts. 7047a—2 to 7047a—18.

42. Vernon's Ann.Civ.St. art. 7066b.

41. Vernon's Ann.Civ.St. art. 7060a.

43. Vernon's Ann.Civ.St. art. 7066b—1.

**TITLE 127—VETERINARY MEDICINE AND SURGERY****Art. 7465a. Veterinary licensing act****Rules of professional conduct**

Sec. 8. The Board may from time to time adopt, alter, or amend rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills and practice in the profession of veterinary medicine. Provided, however, that all such rules and regulations shall not be effective until they are approved by the Attorney General of this state and filed with the Secretary of the State of Texas. As amended Acts 1959, 56th Leg., p. 833, ch. 373, § 1.

Effective 90 days after May 12, 1959, date of adjournment.

**Expiration and renewal of licenses**

Sec. 13. Licenses shall expire March 1st of each calendar year, and any licensee may renew his license on or before March 1st by making written application to the Board setting forth such facts as the Board may require, and by paying the required fee. Any person whose license expires, or has expired prior to the effective date of this Act, may, in the discretion of the Board, renew his license by making written application to the Board setting forth such facts as the Board may require, and by payment of annual renewal fees in arrears and an additional fee of Five Dollars (\$5.00); provided, however, that the requirements governing the payment of the annual renewal fee and the penalty for late renewal shall not apply to licensees who are on active duty with the Armed Forces of the United States of America and who do not engage in private or civilian practice; provided further, licensees who are full-time members of the faculty of a reputable veterinary college or school in the State of Texas where such faculty members perform their services for the sole benefit of such school or college and who do not engage in private or civilian practice shall pay one-half ( $\frac{1}{2}$ ) of the annual renewal fee fixed by the Board pursuant to law. As amended Acts 1959, 56th Leg., p. 833, ch. 373, § 2.

Effective 90 days after May 12, 1959, date of adjournment.

**Revocation or suspension of license; refusal to examine applicant or issue or renew license; grounds**

Sec. 14. The Board may revoke or suspend any license, may refuse to examine an applicant, to issue a license or to issue a renewal of a license, after notice and hearing as provided in Section 15 of this Act, or as provided by the rules of the Board, if it finds that an applicant or licensee:

(a) Has presented to the Board dishonest or fraudulent evidence of qualification; has been guilty of illegal fraud or deception in the process of examination, or for the purpose of securing a license; or

(b) Is chronically or habitually intoxicated or is addicted to drugs; or

(c) Has engaged in dishonest or illegal practices in or connected with the practice of veterinary medicine; or

(d) Has been convicted of a felony involving moral turpitude under the laws of this or any other state of the United States; or

(e) Has engaged in practices or conduct in connection with the practice of veterinary medicine which are violative of the standards of professional conduct as duly promulgated by the Board in accordance with law; or

(f) Has permitted or allowed another to use his license, or certificate to practice veterinary medicine in this state, for the purpose of treating, or offering to treat, sick, injured or afflicted animals. As amended Acts 1959, 56th Leg., p. 833, ch. 373, § 3.

Effective 90 days after May 12, 1959, date of adjournment.

#### Appeals

##### Sec. 16.

b. The trial in the district court shall be de novo as in cases of appeal from the justice courts to the county courts of the State of Texas. Either party may demand a jury to pass upon the disputed fact issues. The district court upon final hearing shall enter its judgment suspending or revoking the license or refusing to suspend or revoke the license as the court may determine. The Board or the applicant or licensee may appeal as in other civil cases. As amended Acts 1959, 56th Leg., p. 833, ch. 373, § 4.

Effective 90 days after May 12, 1959, date of adjournment. Section 5 of the amendatory Act of 1959 contained a severability clause.

## TITLE 128—WATER

## I. IRRIGATION AND WATER RIGHTS

## CHAPTER ONE—USE OF STATE WATER

## 2. BOARD OF WATER ENGINEERS

Art. 7500a. Permit; application; notice; publication; fees; approval

1. Anyone may construct on his own property a dam or reservoir to impound or contain not to exceed two hundred (200) acre feet of water for domestic and livestock purposes without the necessity of securing a permit therefor.

2. The owner of any such dam or reservoir wishing to take water from such dam or reservoir for any beneficial purpose or purposes other than domestic or livestock use who elects to proceed under this Article shall file with the Board of Water Engineers of the State of Texas or its successor a sworn application for a permit on forms to be furnished by the Board upon request, containing the following information:

- a. The name and post office address of the applicant;
- b. The nature and purpose of the use and the amount of water to be used annually for each purpose;
- c. The major watershed and the tributary (named or unnamed) thereto upon which such dam or reservoir is located, the county in which it is located, the approximate distance and direction from the county seat of such county to the location of such dam or reservoir;
- d. The survey or the portion of such survey upon which such dam and reservoir are located, and, to the best of affiant's knowledge and belief, the distance and direction of the mid-point of such dam or reservoir from a corner of such survey, which information the Board may require to be marked upon an aerial photograph or map furnished by the Board;
- e. The approximate surface area to the nearest acre of such reservoir when full and the approximate average depth in feet when full;
- f. The approximate number of square miles in the drainage area above the dam or reservoir; and
- g. If irrigation is the purpose, the total number of irrigable acres in the area, the number of acres to be irrigated within such area in any one year, and the approximate distance and direction of the land to be irrigated from the mid-point of such dam or reservoir.

3. Before the Board shall approve any such application and issue any such permit, notice of such application shall be given substantially in the following manner: Such notice shall be in writing; shall state the name of the applicant and his residence; the date of the filing of the application in the office of the Board; the purpose and extent of the proposed appropriation of water; the source of supply and the place at which the water is to be stored. Such notice shall also state the time and place when and where such application will be heard by the Board.

4. Such notice shall be published once only at least twenty (20) days prior to the date stated in such notice for the hearing of such ap-



plication in some newspaper having a general circulation in the county where such dam or reservoir is located. In addition to such publication, a copy of such notice shall be transmitted by the Secretary of the Board by first-class mail addressed to each water user from such source of water supply whose claim or appropriation has been filed in the office of the Board and whose diversion point is downstream from that described in such application. Such notice shall be mailed not less than fifteen (15) days before the date set for the hearing.

5. The applicant shall pay to the Board at the time of filing such application the applicable fees and costs as provided by this Chapter.

6. Upon determination that (1) there is unappropriated water or a seasonal supply of unappropriated water in the source of supply, (2) the applicant has met the requirements of this Article, and (3) the water is to be used for a beneficial purpose, the Board shall approve all such applications filed hereunder and issue in whole or in part the permit either as a regular permit, a seasonal permit, or a permit for a term of years unless the Board finds the proposed use detrimental to the public welfare or the welfare of the locality, or the proposed use will impair existing water rights.

7. The procedures and requirements herein established shall not be deemed to be exclusive, and owners of dams and reservoirs to which this Article is applicable may elect to proceed hereunder or under other applicable provisions of law relating to obtaining a permit or permits to appropriate public waters of the State of Texas. As amended Acts 1959, 56th Leg., p. 260, ch. 151, § 1.

Emergency. Effective May 8, 1959.

Section 2 of the amendatory Act of 1959 repealed all conflicting laws and parts of laws to the extent of such conflict only.

Section 3 provided: "This Act shall in no way alter, affect or change the status quo of riparian rights or rights in diffused surface waters."

## CHAPTER TWO—WATER IMPROVEMENT DISTRICTS

### Art.

7656a. Waiver by district board of immunity from liability for injuries suffered by certain Mexican workers [New].

Art. 7656a. Waiver by district board of immunity from liability for injuries suffered by certain Mexican workers

The board of directors of any water improvement district, water control and improvement district or irrigation district, organized and existing under and by virtue of the laws of the state, is hereby authorized, in its discretion, to contract in writing in advance to waive any immunity of such district from liability in damages for personal injuries or sickness, proximately caused by the torts of such district, or the negligence of agents or employees of such district, that may be suffered by Mexican workers employed by such district under the terms of the Migrant Labor Agreement of 1951 between the United States of America and Mexico approved August 11, 1951, as amended, or any renewal, amendment or extension of such agreement, or any subsequent agreement of like nature, when in the judgment of such board of directors, such contract of waiver is in the best interest of such district, and necessary to enable

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

such district to contract for the employment of such Mexican workers. Acts 1959, 56th Leg., 2nd C.S., p. 104, ch. 15, § 1.

Emergency. Effective July 21, 1959.

Powers of directors.

Water control and improvement districts, see art. 7880—36.

Water improvement districts to contract and to employ necessary employees, see art. 7652.

Title of Act:

An Act authorizing the board of directors of any water improvement district,

water control and improvement district or irrigation district, in its discretion, to contract in writing in advance to waive any immunity of such district from liability for torts or negligence of agents of such district in certain cases and circumstances; and declaring an emergency. Acts 1959, 56th Leg., 2nd C.S., p. 104, ch. 15.

#### Art. 7718. Election or appointment of directors: terms of office

(a) There shall be held a general election in each water improvement district on the second Tuesday in January of each even-numbered year hereafter for the purpose of electing five (5) directors of such district; provided,

(b) The Board of Directors of any such district may, by resolution duly adopted by the affirmative votes of not less than four (4) of such directors, provide staggered terms of office of directors of said district thereafter elected. If said resolution is adopted during the year in which the directors of said district then in office were elected, and prior to December 1st of said year, said resolution may provide that the then terms of office of all of the directors shall terminate on the second Tuesday in January of the next succeeding year and that an election shall be held in said district on said date for the election of five (5) directors of said district whose terms of office shall be staggered, as hereinafter set forth.

If said resolution is adopted during the second year of the terms of the directors then in office and prior to December 1st of such year, said resolution may provide that the terms of office of the five (5) directors of the district to be elected on the second Tuesday in January next thereafter, shall be staggered as hereinafter provided.

Said resolution may provide that the two (2) directors receiving the smallest number of votes at said election designated in said resolution for electing directors for staggered terms shall serve for one (1) year and the three (3) remaining directors elected at such election shall serve for two (2) years; provided, if no two (2) of said directors receive a less number of votes than the other three (3), then the said directors shall determine by lot which two (2) of them shall serve for one (1) year and which three (3) of them shall serve for two (2) years.

On the second Tuesday of January of each year following said designated election, an election shall be held in such district to elect directors to succeed the directors whose terms of office then expire, and the terms of office of all directors of said district elected after the said designated election above mentioned, shall be for two (2) years.

(c) In all such districts hereafter organized, containing not to exceed twelve thousand (12,000) acres of land, in which sixty per cent (60%) or more of the lands are owned by persons who do not reside in the district, the petition for organization of such district may provide that the directors of such district shall be appointed by the county Commissioners Court of the county in which such district is situated. In all such districts in which the petition so provides the directors shall be appointed by the county Commissioners Court and no election for directors shall be held therein. They shall be so appointed at the time fixed for the election of directors in other districts and if, for any reason, said court

is not in session at that time, as soon thereafter as possible. The owners of the lands in such district may file with the court petitions expressing their choice of persons to be selected as directors, and if the owners of sixty per cent (60%) of such lands agree upon the persons to be appointed, the court shall be governed thereby, otherwise said court shall appoint suitable, qualified persons as directors. As amended Acts 1959, 56th Leg., p. 83, ch. 42, § 1.

Effective 90 days after May 12, 1959,  
date of adjournment.

**Art. 7718c. Repealed. Acts 1959, 56th Leg., p. 83, ch. 42, § 2. Eff. 90 days after May 12, 1959, date of adjournment**

Subject matter is now covered by art. 7718.

### CHAPTER THREE A—WATER CONTROL AND IMPROVEMENT DISTRICTS

#### Art. 7880—1. May be organized; petition

Validation of contracts affecting water and sewer facilities of cities and contiguous water control and improvement districts, see art. 1182c—6.

##### Creating and Validating Acts

Bell County Water Control and Improvement District No. 5,

Eminent domain powers, see Acts 1959, 56th Leg., p. 514, ch. 227.

Validation, see Acts 1959, 56th Leg., p. 513, ch. 226.

Bexar County Water Control and Improvement District No. 16, validation, see Acts 1959, 56th Leg., p. 437, ch. 197, §§ 1 to 7c.

Brazos County Water Control and Improvement District No. 1, creation and validation, see Acts 1959, 56th Leg., 1st C.S., p. 30, ch. 10.

Calhoun County Water Control and Improvement District No. 1, validation, see Acts 1959, 56th Leg., p. 1021, ch. 472.

Collingsworth County Water Control and Improvement District No. 1, validation, see Acts 1959, 56th Leg., p. 1047, ch. 479.

Colorado County Water Control and Improvement District No. 2, creation and validation, see Acts 1959, 56th Leg., p. 533, ch. 237.

Concho County Water Control and Improvement District No. 2, additional powers, see Acts 1959, 56th Leg., 1st C.S., p. 33, ch. 11.

Dallam County Underground Water Conservation District No. 1, creation and validation, see Acts 1959, 56th Leg., p. 151, ch. 91, §§ 1-5.

Donley County Water Control and Improvement District No. 1, power to convey properties, see Acts 1959, 56th Leg., p. 765, ch. 346.

East Keechi Creek Water Control and Improvement District, creation and validation, see Acts 1959, 56th Leg., 1st C.S., p. 36, ch. 13.

Hall and Donley Counties Water Control and Improvement District No. 1, validation, see Acts 1959, 56th Leg., p. 920, ch. 424.

Hudspeth County Water Control and Improvement District No. 1, validation, Acts 1959, 56th Leg., p. 646, ch. 299.

Kent Creek Water Control and Improvement District No. 1, creation and validation, see Acts 1959, 56th Leg., p. 1032, ch. 476.

Lamar County Water Control and Improvement District No. 1, validation, see Acts 1959, 56th Leg., p. 345, ch. 167, § 15.

Lamar County Water Control and Improvement District No. 3, validation, see Acts 1959, 56th Leg., p. 348, ch. 168, § 15.

Mills County Water Control and Improvement District No. 1, creation and validation, see Acts 1959, 56th Leg., p. 1034, ch. 477.

North Bosque Water Control and Improvement District, validation, see Acts 1959, 56th Leg., 2nd C.S., p. 115, ch. 22.

Pecos County Water Control and Improvement District No. 2, validation, see Acts 1959, 56th Leg., 1st C.S., p. 39, ch. 16.

Taylor County Water Control and Improvement District No. 1, creation and validation, see Acts 1959, 56th Leg., 2nd C.S., p. 150, ch. 35.

Tom Green County Water Control and Improvement District No. 1, defining boundaries, detachment of land, annexation, see Acts 1959, 56th Leg., p. 354, ch. 171, §§ 1 to 3.

Water control and improvement districts of Travis county, creation and validation, see Acts 1959, 56th Leg., p. 764, ch. 345.

Wichita County Water Control and Improvement District No. 1, extension of boundaries, see Acts 1959, 56th Leg., p. 217, ch. 126.

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Williamson County Water Control and Improvement District No. 1, validation, see Acts 1959, 56th Leg., 3rd C.S., p. 386, ch. 11.

Lamar County Water Control and Improvement District No. 1, special assessments, see Acts 1959, 56th Leg., p. 345, ch. 167, §§ 1-14.

#### Taxation

Lake Fork Water Control and Improvement District No. 1, assessment and collection of special assessment, Acts 1959, 56th Leg., p. 100, ch. 51, effective April 2, 1959.

Lamar County Water Control and Improvement District No. 3, special assessments, see Acts 1959, 56th Leg., p. 348, ch. 168, §§ 1-14.

Contracts with soil conservation districts for flood control and drainage, see art. 1109K.

#### Art. 7880—36, 7880—48, 7880—51

Waiver by district board of immunity from liability for injuries suffered by certain Mexican workers, see art. 7656a.

## II. LEVEES

### CHAPTER SIX—LEVEE IMPROVEMENT DISTRICTS

#### I. ESTABLISHMENT

Art.

7987—1. Supervisors in districts whose boundaries are coterminous with one county [New].

Art. 7987—1. Supervisors in districts whose boundaries are coterminous with one county

At any time after formation of a Levee Improvement District whose boundaries are coterminous with the boundaries of one county, an election may be held to determine whether supervisors for the district shall be elected as herein provided, instead of being appointed, and whether the provisions of this Act shall govern the District.

(a) Petition. A petition signed by at least twenty-five (25) electors in each county commissioners precinct of the county who are qualified to vote at said election shall be presented to the County Judge of the county, requesting that an election be held in the district to (1) determine whether supervisors for the district shall thereafter be elected, there to be five (5) supervisors, one of whom shall be elected by the qualified voters of the entire district, and one from each county commissioners precinct by the qualified voters of each precinct, each of said supervisors to hold office for a regular term of two (2) years; and (2) to elect supervisors who shall serve until the next general election, in the event the district votes to elect supervisors.

The petition shall also submit the names of one or more nominees for each position of supervisor.

(b) Qualification of supervisors. The supervisors shall be qualified property taxpaying electors of the precinct and county from which they are elected, and otherwise eligible under the Constitution and laws of this State to hold the office to which each is elected.

(c) Election. Upon presentation of said petition, the County Judge shall order an election for the purposes stated in the petition, which shall be held not later than thirty (30) days from date of the Order calling the election. The Clerk of the Commissioners Court shall issue notices of the election; and he shall cause such notice to be published in a newspaper

of general circulation in the county once each week for two (2) consecutive weeks, the first publication to be not less than fourteen (14) days next prior to the election. The Sheriff of the county shall post a copy of the notice at each polling place designated in the election order, at least twenty (20) days prior to the election. The election order shall designate the polling places, which shall be the same as those named in the last general election held in the county; provided that any changes in polling places since the last general election made prior to presentation of the petition shall apply to this election.

(d) Except as provided in this Act, elections to determine the two (2) propositions stated in subsection (a) herein, shall be governed in all other respects by the general election laws of this State. All expenses incident to calling and holding the election shall be paid by the county.

(e) Subject to all provisions of this Act, the two (2) propositions stated in subsection (a) herein may be voted upon at a general election.

(f) After any District shall have adopted the provisions of this Act, and elected supervisors to serve until the next general election, the five (5) supervisors for the district shall be elected thereafter at each general election for term of two (2) years.

(g) All vacancies in office of any supervisor elected under this Act shall be filled by the remaining supervisors of the district.

(h) Supervisors shall receive as compensation for their services the sum of Twenty Dollars (\$20) for each official meeting which they attend, limited to not more than Forty Dollars (\$40) for any one month.

(i) Subject only to the provisions of this Act, all other provisions of law applicable to Levee Improvement Districts shall be in full force and effect as to Districts which adopt the provisions of this Act. Added Acts 1959, 56th Leg., p. 364, ch. 176, § 1.

Emergency. Effective May 18, 1959.

Section 2 of the Act of 1959 contained a severability clause.

## CHAPTER SEVEN—DRAINAGE DISTRICTS

### 1. ESTABLISHMENT

Art.

8176b—2. Annexation of territory to drainage district located within county having in excess of 175,000 inhabitants [New].

Art.

8176d. Consolidation of contiguous drainage districts lying within same county [New].

### 1. ESTABLISHMENT

Art. 8097. [2567] May establish

Creating and Validating Acts

Brazoria County Drainage District No. 2, creation and validation, see Acts 1959, 56th Leg., p. 765, ch. 347.

Calhoun County Drainage District No. 10, enlargement of district, see Acts 1959, 56th Leg., p. 1023, ch. 474.

Art. 8176b—2. Annexation of territory to drainage district located within county having in excess of 175,000 inhabitants

Section 1. This Act shall apply to any drainage district heretofore or hereafter created in this State under the provisions of Section 52 of Article III, Constitution of Texas, whether by General or Special Law, which district has not been converted into a conservation and reclamation

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

district under Section 59 of Article XVI, Constitution of Texas, and which district is located wholly within a county having a population in excess of one hundred seventy-five thousand (175,000) inhabitants according to the last preceding or any future Federal Census.

Sec. 2. Defined areas of territory contiguous to any such district, and lying wholly within the same county as the annexing district but not within any other drainage district, may be added to such district in the following manner:

(a) A petition praying for the annexation of such territory shall be filed with the Commissioners Court of the county, which petition shall describe the boundaries of the territory proposed to be annexed and which petition shall be signed by twenty-five (25) or a majority of the duly qualified resident electors of said territory.

(b) If the Commissioners Court finds that such petition meets the requirements of paragraph (a) above, said Court shall order a hearing upon such petition, setting the time and place thereof, which hearing shall be held before the Commissioners Court within thirty (30) days after the date of such order. Notice of the hearing shall consist of a substantial copy of the order calling the same, and said notice shall be published in a newspaper having general circulation within the district and within such territory at least two (2) times not less than ten (10) nor more than twenty (20) days before the date set for said hearing.

(c) All persons whose land or other property might be affected by the proposed annexation, and all other interested persons and parties, may appear at the hearing and offer testimony or evidence either for or against the proposed annexation, and said hearing may be adjourned from day to day. If the Commissioners Court shall, at the conclusion of such hearing, determine that both the district and the land and property therein and the territory proposed to be annexed and the land and property therein would be benefited by such annexation, it shall order an election upon the proposition of whether said Court shall annex such territory to the district. Provision shall be made in the order calling said election for a voting place, or places, both in the district and in the territory proposed to be annexed, and only duly qualified resident electors of the district, or of the territory proposed to be annexed, as the case may be, shall be qualified to vote at said election. The ballot shall have written or printed thereon "FOR ANNEXATION" and "AGAINST ANNEXATION." Notice of said election shall be given in the same manner as the notice of hearing, as above provided. Except as provided herein, said election shall be called and held in accordance with the General Election Laws of this State. The Commissioners Court shall adopt an order canvassing the returns of the votes cast at said election, and if a majority of those voting at such election within the district and a majority of those voting at such election within the territory proposed to be annexed shall vote in favor of such annexation, the Court shall adopt an order declaring the annexation of said territory to the district. Thereafter such territory shall be a part of the district.

(d) If said election results favorably to the annexation of said territory, the Commissioners Court shall adopt an order defining the boundaries of the district as enlarged by such annexation, and a certified copy of such order shall be filed and recorded in the deed records of the county.

(e) The commissioners of the district shall continue as commissioners of the enlarged district until their successors have been elected, or appointed, and have qualified under the provisions of the General Law pertaining to drainage districts.

Sec. 3. If the district has at the time of such annexation outstanding tax bonds, then after such territory has been annexed to the district, the

Commissioners Court may, and if requested in writing by the commissioners of the district said Court shall, order an election to be held over the district as enlarged, at which election the proposition of assuming such bonds by the district as enlarged and the levying of taxes in payment thereof, shall be submitted. Only duly qualified resident electors of the district as enlarged who own taxable property therein and who have duly rendered the same for taxation shall be qualified to vote at said election. The ballot shall have written or printed thereon "FOR ASSUMPTION OF BONDS AND LEVY OF TAX IN PAYMENT THEREOF" and "AGAINST ASSUMPTION OF BONDS AND LEVY OF TAX IN PAYMENT THEREOF." Said election shall be called and held and notice shall be given in the same manner as in the case of bond elections in drainage districts. If a two-thirds ( $\frac{2}{3}$ ) majority of those voting at said election shall vote in favor of the proposition, then the outstanding bonds will thereupon become the obligations of the district as enlarged, and thereafter taxes shall be levied on all taxable property within the district as enlarged for the payment of the interest on and principal of said bonds. The fact that the proposition in any bond assumption election may fail to receive the required two-thirds ( $\frac{2}{3}$ ) majority vote, as above provided, shall not prevent the calling and holding of a subsequent bond assumption election or elections; provided, however, that no such election shall be held within one year after any bond assumption election may have failed as above provided.

Sec. 4. The provisions of this Act shall be cumulative of all other Laws, General and Special, relating to the subject matter hereof; and in all matters not covered by the terms hereof, the provisions of the General Laws shall govern. Acts 1959, 56th Leg., p. 879, ch. 403.

Emergency. Effective May 30, 1959.

Section 5 of the Act of 1959 contained a severability clause.

#### Art. 8176d. Consolidation of contiguous drainage districts lying within same county

Section 1. This Act shall apply to drainage districts heretofore or hereafter created in this State under the provisions of Section 52 of Article III, Constitution of Texas, whether by General or Special Law, which districts have not been converted into conservation and reclamation districts under Section 59 of Article XVI, Constitution of Texas, and which districts are located wholly within a county having a population in excess of one hundred seventy-five thousand (175,000) inhabitants according to the last preceding or any future Federal Census.

Sec. 2. Such drainage districts which are contiguous and lie wholly within the same county as the annexing district may be consolidated in the following manner:

(a) A petition from each of such districts praying for the consolidation of such districts shall be filed with the Commissioners Court of the county, which petitions shall be signed by twenty-five (25) or a majority of the duly qualified resident electors of each of such districts.

(b) If the Commissioners Court finds that such petitions meet the requirements of paragraph (a) above, said Court shall order a hearing upon such petitions, setting the time and place thereof, which hearing shall be held before the Commissioners Court within thirty (30) days after the date of such order. Notice of the hearing shall consist of a substantial copy of the order calling the same, and said notice shall be published in a newspaper having general circulation within such districts at least two

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(2) times, not less than ten (10), nor more than twenty (20) days before the date set for said hearing.

(c) All persons whose land or other property might be affected by the proposed consolidation, and all other interested persons and parties, may appear at the hearing and offer testimony or evidence either for or against the proposed consolidation, and said hearing may be adjourned from day to day. If the Commissioners Court shall, at the conclusion of such hearing, determine that such districts and the land and property therein and the territory therein would be benefited by such consolidation, it shall order an election in each of such districts upon the proposition of whether said Court shall consolidate such districts. Provision shall be made in the order calling said elections for a voting place, or places in each of such districts, and only duly qualified resident electors of such districts shall be qualified to vote at said elections. The ballots shall have written or printed thereon

“FOR Consolidation” and

“AGAINST Consolidation.”

Notice of said elections shall be given in the same manner as the notice of hearing, as above provided. Except as provided herein, said elections shall be called and held in accordance with the General Election Laws of this State. The Commissioners Court shall adopt an order canvassing the returns of the votes cast at each of said elections, and if a majority of those voting at each election within the respective districts shall vote in favor of such consolidation, the Court shall adopt an order declaring the consolidation of said districts.

(d) If said elections result favorably to the consolidation of such districts, the Commissioners Court shall adopt an order defining the boundaries of the district as enlarged by such consolidation, and a certified copy of such order shall be filed and recorded in the deed records of the county.

(e) The commissioners of the district having the greatest valuations for taxation on the county tax rolls shall continue as commissioners of the consolidated district until their successors have been elected, or appointed, and have qualified under the provisions of the General Law pertaining to drainage districts.

Sec. 3. If either of the districts has at the time of such consolidation outstanding tax bonds, then after such consolidation, the Commissioners Court may, and if requested in writing by the commissioners of the district said Court shall, order an election to be held over the district as consolidated, at which election the proposition of assuming such bonds by the district as consolidated and the levying of taxes in payment thereof, shall be submitted. Only duly qualified resident electors of the district as consolidated who own taxable property therein and who have duly rendered the same for taxation shall be qualified to vote at said election. The ballot shall have written or printed thereon

“FOR Assumption of Bonds and Levy of Tax in Payment Thereof” and

“AGAINST Assumption of Bonds and Levy of Tax in Payment Thereof.”

Said election shall be called and held and notice shall be given in the same manner as in the case of bond elections in drainage districts. If a two-thirds ( $\frac{2}{3}$ ) majority of those voting at said election shall vote in favor of the proposition, then the outstanding bonds will thereupon become the obligations of the district as consolidated, and thereafter taxes shall be levied on all taxable property within the consolidated district for the payment of the interest on and principal of said bonds. The fact that the



proposition in any bond assumption election may fail to receive the required two-thirds ( $\frac{2}{3}$ ) majority vote, as above provided, shall not prevent the calling and holding of a subsequent bond assumption election or elections; provided, however, that no such election shall be held within one (1) year after any bond assumption election may have failed as above provided.

Sec. 4. The provisions of this Act shall be cumulative of all other laws, General and Special, relating to the subject matter hereof; and in all matters not covered by the terms hereof, the provisions of the General Laws shall govern. Acts 1959, 56th Leg., p. 877, ch. 402.

Emergency. Effective May 30, 1959.

Section 5 of the Act of 1959 contained a severability clause.

#### IV. CONSERVATION AND RECLAMATION

##### CHAPTER EIGHT—CREATION OF DISTRICTS

###### Art. 8194. Creation

###### Creating and Validating Acts

Donna Irrigation District, Hidalgo County No. 1, creation and validation, as amended Acts 1959, 56th Leg., p. 190, ch. 108.

#### V. NAVIGATION

##### CHAPTER NINE—NAVIGATION DISTRICTS

###### 1. ORGANIZATION

###### Art. 8198. [5955] Scope of district

###### Creating and Validating

Brazos River Harbor Navigation District, creation and validation, see Acts 1927, 40th Leg., p. 156, ch. 55, as amended by Acts 1959, 56th Leg., p. 759, ch. 342.

###### Willacy County Navigation District,

Grant of additional powers, see Acts 1959, 56th Leg., p. 866, ch. 392.

Power to lease or grant easements over land, see Acts 1959, 56th Leg., p. 964, ch. 449.

###### 3. GENERAL PROVISIONS

###### Art. 8263e. Creating self-liquidating and supporting districts; bond issues; authorizing loans from Reconstruction Finance Corporation

###### Ownership of adjacent lands

Sec. 78. Such districts shall have the right, power and authority to own lands adjacent or accessible to the navigable waters developed by them, and may lease same to any individual or corporation and charge therefor reasonable tolls, fees or other charges, and use such proceeds both for maintenance and operation of the business of such districts and for the purpose of making themselves self-supporting and financially solvent and returning the construction cost of their improvements within a rea-

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sonable period; such lands may be situated partly within and partly without or wholly within or wholly without the boundaries of any incorporated city, town or village of this State, but no such lands not so included within the boundaries of any such city, town or village on the effective date of this Act or included within such boundaries of any such city, town or village at the time of its acquisition by any such district shall ever be annexed by or included within the boundaries of any such city, town or village without the written consent of such district evidenced by resolution duly adopted by the Board of Navigation and Canal Commissioners of such district. As amended Acts 1959, 56th Leg., p. 132, ch. 78, § 1.

Emergency. Effective April 14, 1959.

#### Audits

Sec. 84. A complete book of all accounts and records shall be kept by the District and annually in January of each year or as soon thereafter as may be practicable the County Auditor or, in the discretion of the Board of Navigation and Canal Commissioners of such District, an independent certified public accountant or firm of independent certified public accountants shall be employed to make a complete audit of such books and records and make a report thereon. As amended Acts 1959, 56th Leg., p. 117, ch. 64, § 1.

Emergency. Effective April 8, 1959.

### CHAPTER TEN—PILOTS

#### Art. 8274. [6309], [3800] Pilotage

The rate of pilotage, which may be fixed under Articles 8267 and 8269, on any class of vessels shall not, in any port of this state with the exception of the Port of Galveston, exceed Six (\$6.00) Dollars for each foot of water which the vessel at the time of piloting draws and such rate shall not, in the Port of Galveston, exceed Five and 50/100 (\$5.50) Dollars for each foot of water which the vessel at the time of piloting draws; and whenever a vessel, except of the classes below excepted, shall decline the services of a pilot offered outside the bar, and shall enter the port without the aid of one, she shall be liable to the first pilot whose services she so declined for the payment of half pilotage; and any vessel which, after being brought in by a pilot, shall go out without employing one, shall be liable to the payment of half pilotage to the pilot who brought her in, or if she has come in without the aid of a pilot, though offered outside, she shall on so going out be liable for the payment of half pilotage to the pilot who had first offered his services before she came in; but if she has come in without the aid of a pilot, or the offer of one outside, she shall not, in case of going out without a pilot, be liable to half pilotage. At any port where vessels shall receive or discharge their cargoes at an anchorage outside of the bar, such vessel shall be liable to pilotage at the above rate to such anchorage, but shall not be liable for or compelled to pay pilotage from such anchorage to the open sea; and if any vessel bound from open sea to such anchorage, while under way, shall decline the services of a pilot, and shall afterward receive or discharge any portion of her cargo at such anchorage on the lighters or otherwise, she shall be liable for the payment of half pilotage, at the above rate, to such anchorage to the first pilot whose services shall have been tendered to and declined by her, but not liable for any pilotage from such anchorage to the open sea; and when a pilot takes charge of a vessel twenty miles outside of the bar, and brings her to it, he shall be

entitled to one-fourth pilotage for such off-shore service, in addition to what he is entitled to recover for bringing her in, but if such off-shore service be declined, no portion of said compensation shall be recovered. As amended Acts 1955, 54th Leg., p. 648, ch. 224, § 1; Acts 1959, 56th Leg., p. 33, ch. 21, § 1.

Emergency. Effective March 10, 1959.

Section 2 of the amendatory Act of 1959 repeals all conflicting laws and parts of laws.

## VI. GENERAL PROVISIONS

### CHAPTER ELEVEN—IN GENERAL

Art.

8280—3.5 Water improvement districts;  
exclusion of urban property  
[New].

Art. 8280—3.5 Water improvement districts; exclusion of urban property

#### Definitions

Section 1. The term "urban property" as used in this Act, for the purposes of this Act, means land which has been or may be subdivided into town lots, or town lots and blocks, or small parcels of the same general nature of town lots, or town blocks and lots, designed, intended, or suitable for residential or other nonagricultural purposes, as distinguished from farm acreage; including streets, alleys, parkways and parks that may be included in such subdivision; whether such subdivision be within or near any established city, town or village, or not; the plat or map of which subdivision shall have been duly filed for record and recorded in the Office of the County Clerk of the County in which such subdivision or any part thereof is situated, pursuant to authority duly given as provided by law.

The term "District" as herein used means a water improvement district now existing or hereafter created for the principal purpose of, or principally engaged in, furnishing water for farm irrigation purposes, having a total area of not more than two thousand, five hundred (2,500) acres nor less than one thousand, eight hundred (1,800) acres as of January 1, 1959.

#### Urban property may be excluded; conditions

Sec. 2. Urban property contained within the boundaries of a district and subject to taxation thereby, may be excluded from such district in the manner and upon the conditions hereinafter set forth, after there shall have first been paid to the district all taxes, assessments and other lawful charges of said district accrued thereon, together with all lawful interest and penalties accrued on such taxes, assessments and charges, and after there shall have been paid to such district the proportionate part of the outstanding bonded indebtedness of said district for which the property proposed to be excluded is liable, determined in the manner hereinafter provided.

#### Application for exclusion

Sec. 3. The owner or owners of urban property contained within the boundaries of a district and subject to taxation thereby, and on which all taxes, assessments and other lawful charges, and penalties and interest, which have accrued to such district shall have

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been paid, may make written sworn application to such district to exclude such property from such district. Such application shall be acknowledged by the owner or owners of such property as in the case of deeds; shall describe the property desired to be excluded by lot and/or block number of the subdivision according to the name or designation of such subdivision as shown by and on the recorded plat thereof, or otherwise to clearly identify the same; shall state that said property is used or intended to be used for the purposes for which it was so subdivided, and that the same is not used or intended to be used, in whole or in part, for agricultural purposes; and shall accompany such application with a correct copy of the recorded map or plat of such subdivision and clearly delineate thereon the part or portion of the subdivision, if less than the whole, desired to be excluded from the district. The applicant or applicants shall also furnish to the district, evidence satisfactory to, or required by, the Board of Directors of the district, of the ownership by the applicant or applicants of the property proposed to be excluded, and of the right of the applicant or applicants to have the same excluded from the district.

#### Determination by the board of directors

Sec. 4. The Board of Directors of the district shall, as soon as practicable after the filing of said application, consider the same, and inquire into all the facts relating thereto deemed by said Board to be necessary to a determination of whether or not such application should be granted. If such Board, after such consideration and investigation, finds and is satisfied that all taxes, assessments and charges of the district on or against said property, and interest and penalties thereon, that have become due to the district up to the date of the filing of said application, have been paid; that the property described in said application is owned by the applicant or applicants, and is urban property, as herein defined; and is not used or intended to be used for agricultural purposes; that the exclusion of such property will not cut the district or its facilities off from ready and convenient access to other land remaining in the district for irrigation or other district purposes; and that it would be to the interest and advantage of the district and its bondholders and of such urban property that the same be excluded from the district, the Board may pass an order approving such application; otherwise, said application shall be rejected, and the decision and order of said Board rejecting said application shall be final and not subject to review by any other body or tribunal or authority.

If said Board so approves said application it shall proceed to determine the proportionate amount of the bonded indebtedness that the property so to be excluded is liable for, in the following manner and on the following basis:

The Board shall cause the Tax Assessor and Collector of the district to ascertain and officially certify the average annual assessed valuation of all the property proposed to be excluded for the five (5) years next preceding the year in which such application is filed, as shown by the assessment rolls of the district; and also the total assessed valuation of all taxable property within the district according to the then most recent assessment rolls of the district. Such findings of the Tax Assessor and Collector shall be audited by the Board of Directors and corrected if found by it to be erroneous. The part of the total outstanding bonded indebtedness of the district to be paid by said applicant or applicants as a condition precedent to the exclusion of said property, shall be that proportion thereof, including unpaid interest thereon calculated to date of such or-

der, that the average annual assessed valuation of the property to be excluded, ascertained as above provided, bears to the total assessed valuation of all taxable property within the district according to its then most recent assessment rolls. The order of the Board of Directors approving such application shall also set forth the amount of the said bonded indebtedness required to be paid as a condition of the exclusion of said property determined as aforesaid.

#### Deposit of apportionable part of bonded indebtedness

Sec. 5. The order of the Board of Directors approving said application shall have no force or effect, and no further proceeding shall be had on said application, unless the applicant or applicants, within twenty (20) days after the passing of said order, or such further time, not exceeding thirty (30) days, as may be allowed and ordered by the said Board, deposit with the district the part of the bonded indebtedness of the district apportionable to the property to be excluded, determined and set forth in said order as above provided.

#### Notice and hearing

Sec. 6. If such deposit is so made within the time so limited, the Board of Directors shall set said application down for public hearing to be held at the regular office of the district not less than fifteen (15) days nor more than thirty (30) days after the date of the ordering of such hearing.

The Board of Directors shall cause notice of said hearing to be given by posting the same in a conspicuous place in the office of the district, at the courthouse door of the county in which the property proposed to be excluded is situated, at a conspicuous place on or near said property, and at two (2) other public places within the district, at least ten (10) days before the date of such hearing.

Said notice shall be addressed to all taxpayers and bondholders of the district (naming it) and all persons interested in the property proposed to be excluded; shall state the names of the applicants and contain a description of the property proposed to be excluded, the time and place of the hearing, and state the amount ascertained as the proportionate part of the bonded indebtedness for which said property is liable; and shall contain substantially the following statement: "All taxpayers and bondholders of said district and all persons interested in the property proposed to be excluded, or any part thereof, may appear at said hearing, in person or by attorney, and show cause, if any they have, why said application should not be granted or why it should be granted" and shall be signed by the Secretary of said Board. Said hearing may, at the discretion of the Board, be adjourned from time to time, in order to give all persons appearing and entitled to be heard on the subject an opportunity to do so.

#### Orders

Sec. 7. If as a result of said hearing said Board should determine that for any reason said application should not be granted, it shall pass an order rejecting the same, and the deposit made by the applicant or applicants shall be subject to withdrawal by such applicants or on their order. The order rejecting said application shall not be subject to review by any other body, tribunal or authority than said Board of Directors.

But if, as a result of said hearing, said Board of Directors should determine that it would be to the interest and advantage of the district,

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

its bondholders, and to the property proposed to be excluded, that said application be granted, it shall pass its final order to that effect, describing the property excluded, ordering the amount deposited by the applicants on account of the bonded indebtedness of the district placed in the bond interest and sinking fund of the district, and reciting that said property shall no longer be a part of the district or liable for any indebtedness of or further taxation or assessment by the district.

A certified copy of said final order, certified to and acknowledged by the Secretary of said Board of Directors may be recorded in the deed records of the county in which the excluded property is situated, as evidence of such exclusion.

#### Effect of order of exclusion

Sec. 8. From and after the passage of said final order the property excluded thereby shall constitute no part of such district and shall have no further liability to said district, nor for any bonded or other indebtedness of such district, and shall not be further subject to taxation thereby. Acts 1959, 56th Leg., p. 113, ch. 62.

Emergency. Effective April 8, 1959.

#### Title of Act:

An Act authorizing certain types of property described herein as "urban property" and subject to taxation by certain types of water improvement districts as de-

scribed herein now existing or hereinafter created, to be excluded from such district by proceedings and conditions as described in the Act; and declaring an emergency. Acts 1959, 26th Leg., p. 113, ch. 62.

### Art. 8280—9. Texas Water Development Board

#### Bond issues; approval by Attorney General

Sec. 4. The Board, by appropriate action, is hereby authorized from time to time to provide, by resolution, for the issuance of negotiable bonds in a total aggregate amount not exceeding One Hundred Million Dollars (\$100,000,000.00) and the Board may, upon two-thirds ( $\frac{2}{3}$ ) vote of the elected members of each House at a subsequent Legislature, be given the power to issue additional negotiable bonds in an amount not to exceed One Hundred Million Dollars (\$100,000,000.00). All of such bonds shall be on a parity and shall be called the "Texas Water Development Bonds." The proceeds from the sale of any bond, or bonds, shall be used for the purpose of creating the Texas Water Development Fund provided for by the Constitution. To assure the orderly and economical marketing of bonds and reasonable availability of money in the Texas Water Development Fund, the Board may sell bonds from time to time; provided that bonds may not be sold in excess of Fifteen Million Dollars (\$15,000,000.00) during any six months period. At the option of the Board said bonds may be issued in one (1) or several installments. The bonds of each issue shall be dated, and shall bear interest at a rate not exceeding four percent (4%) per annum, which interest may, at the option of the Board, be payable annually or semi-annually; shall mature serially or otherwise, not later than forty (40) years from their date; and may be redeemable before maturity, at the option of the Board, at such price or prices, and under such terms and conditions as may be fixed by the Board in the resolution providing for the issuance of the bonds. The Board shall determine the form of the bonds, including the form of any interest coupon to be attached thereto, and shall fix the denomination or denominations of said bonds and the place or places of the payment of the principal and interest thereon. Said bonds shall be executed on behalf of the Texas Water Development Board as general obligations of the State of Texas in the following manner: They shall be signed by the chairman and secretary respectively of the

Board, and the seal of the Board shall be impressed thereon, and they shall be signed by the Governor and attested by the Secretary of State of the State of Texas with the Seal of the State of Texas impressed thereon. The resolution authorizing the issuance of any installment or series of bonds may prescribe the extent to which facsimile signatures and facsimile seals in lieu of manual signatures and manually impressed seals may be used in executing such bonds and appurtenant coupons. Interest coupons may be signed by the facsimile signatures of the chairman and secretary of the Board. In the event, any officer whose manual or facsimile signature appears on any bond, or whose facsimile signature shall appear on any coupon, shall cease to be such officer before the delivery of the bonds, the signature shall, nevertheless, be valid and sufficient for all purposes the same as if he had remained in office until such delivery had been made. The resolution may provide for registration of the bonds as to ownership and for successive conversion and reconversion from registered to bearer bonds and vice versa. Before any such bonds so issued are delivered to the purchasers, the record pertaining thereto shall have been examined by the Attorney General of Texas and said records and bonds shall be approved by him. After such approval, the bonds shall be registered in the office of the Comptroller of Public Accounts of Texas. All bonds issued hereunder shall after approval by the Attorney General, registration by the Comptroller of Public Accounts of the State of Texas, and delivery to the purchasers, be incontestable and shall constitute general obligations of the State of Texas. The performance of official duties prescribed by Article III, Section 49-c of the Constitution and by the Original Act as amended in reference to the provision for the payment and the payment of such bonds may be enforced in any court of competent jurisdiction through mandamus or other appropriate proceedings. All bonds issued in accordance with and under the provisions of this Act shall be, and are hereby declared to be negotiable instruments under the laws of this state. The Board is fully authorized to provide for the replacement of any bond which might have become mutilated, lost or destroyed. As amended Acts 1959, 55th Leg., p. 333, ch. 164, § 1.

#### **Investment of moneys in Interest and Sinking Fund**

Sec. 10-D. All moneys standing to the credit of the Interest and Sinking Fund which may not be needed to pay obligations maturing during the current fiscal year may be invested by the Board in bonds of the United States, or the State of Texas (or of the several counties or municipalities or other political subdivisions of the State of Texas, except bonds issued by any such political subdivision to finance the projects as herein defined); and such Board may sell such bonds, or any of them at the governing market rate; provided, however, to the extent that the resolution or resolutions authorizing the issuance of bonds hereunder further restrict the investment of such moneys in bonds of the United States, such restrictions shall be binding on the Board. Surplus moneys in the Development Fund which may not be needed for at least ninety (90) days shall be invested in direct obligations of the United States of America maturing on or prior to the contemplated date on which said funds will be needed. As amended Acts 1959, 56th Leg., p. 333, ch. 164, § 2.

Emergency. Effective May 12, 1959.

## VII. PARTICULAR WATER SUPPLY AND CONTROL DISTRICTS

## CHAPTER TWELVE—CREATION, POWERS AND OBLIGATIONS

*The complete text of Acts relating to particular Water Supply and Control Districts, as amended, is set out in Vernon's Annotated Civil Statutes, Articles 8280—119 et seq.*

Art. 8280—216.	Wichita County Water Control and Improvement District No. 6 [New].	Art. 8280—230.	Grayson County Water and Sewer Authority [New].
8280—217.	Choctaw Watershed Water Improvement District [New].	8280—231.	City of Bonham Water Authority [New].
8280—218.	Lavaca County Flood Control District No. 3 [New].	8280—232.	Riesel Municipal Utility District [New].
8280—219.	Edwards Underground Water District [New].	8280—233.	Real-Edwards Conservation and Reclamation District [New].
8280—220.	Attoyac Bayou Watershed Authority [New].	8280—234.	Clear Creek Watershed Authority [New].
8280—221.	Hays County Wimberley Water Supply District [New].	8280—235.	Pineland Municipal Water Supply District [New].
8280—222.	Aquilla-Hackberry Creek Conservation District [New].	8280—236.	Mill Creek Water Control and Improvement District [New].
8280—223.	Bexar County (Oak Hills) Water Control and Improvement District [New].	8280—237.	Galveston County Drainage District No. 4 [New].
8280—224.	Bexar County (Lackland) Water Control and Improvement District [New].	8280—238.	Valley Creek Water Control District [New].
8280—225.	Bexar County (Northwest) Water Control and Improvement District [New].	8280—239.	Iron's Bayou Watershed Conservation District [New].
8280—226.	Del Mar Conservation District [New].	8280—240.	Beason-Cedar Creek Watershed Authority [New].
8280—227.	Bell County Improvement District [New].	8280—241.	Coke County Kickapoo Water Control and Improvement District No. 1 [New].
8280—228.	Red River Authority of Texas [New].	8280—242.	Williamson County Water Supply District [New].
8280—229.	Turkey Creek Conservation District [New].	8280—243.	Palo Duro River Authority [New].
		8280—244.	Mayfair Park Municipal Utility District [New].

## Art. 8280—107. Lower Colorado River Authority

Acts 1959, 56th Leg., p. 708, ch. 327, § 1.

## Art. 8280—119. San Antonio River Authority

Acts 1959, 56th Leg., p. 78, ch. 37.

Art. 8280—128. Repealed. Acts 1959, 56th Leg., p. 163, ch. 95, § 20.  
Eff. April 28, 1959

## Art. 8280—131. Jackson County Flood Control District

Acts 1959, 56th Leg., 3rd C.S., p. 434, ch. 22, § 1.

## Art. 8280—147. Northeast Texas Municipal Water District

Acts 1959, 56th Leg., p. 836, ch. 375, §§ 1, 2. Acts 1959, 56th Leg., 2nd C.S., p. 144, ch. 28, § 1.

## Art. 8280—157. Upper Neches River Municipal Water Authority

Acts 1959, 56th Leg., 2nd C.S., p. 93, ch. 9, §§ 1-4. Acts 1959, 56th Leg., 3rd C.S., p. 378, ch. 3, § 1.



Art. 8280—161. Jackson County Water Control and Improvement District

Acts 1959, 56th Leg., p. 570, ch. 261, §§ 1, 2.

Art. 8280—162. West Central Texas Municipal Water District

Acts 1959, 56th Leg., p. 24, ch. 24, §§ 1, 2.

Art. 8280—167. Yorks Creek Improvement District

Acts 1959, 56th Leg., p. 87, ch. 45, § 1.

Art. 8280—173. Haltom City Water Authority

Acts 1959, 56th Leg., p. 707, ch. 326, § 1.

Art. 8280—174. Newton County Water Supply District

Acts 1959, 56th Leg., p. 264, ch. 153, § 1.

Art. 8280—187. Fort Bend County Water Supply District

Acts 1959, 56th Leg., p. 12, ch. 6, § 1.

Art. 8280—188. Trinity River Authority of Texas

Acts 1959, 56th Leg., 2nd C.S., p. 29, ch. 2, §§ 1, 2.

Art. 8280—206. Bistone Municipal Water Supply District

Acts 1959, 56th Leg., p. 567, ch. 258, § 1.

Art. 8280—216. Wichita County Water Control and Improvement District No. 6

Acts 1959, 56th Leg., p. 40, ch. 25.

Art. 8280—217. Choctaw Watershed Water Improvement District

Acts 1959, 56th Leg., p. 67, ch. 33.  
Acts 1959, 56th Leg., p. 366, ch. 177, § 1.

Art. 8280—218. Lavaca County Flood Control District No. 3

Acts 1959, 56th Leg., p. 163, ch. 95.

Art. 8280—219. Edwards Underground Water District

Acts 1959, 56th Leg., p. 173, ch. 99.

Art. 8280—220. Attoyac Bayou Watershed Authority

Acts 1959, 56th Leg., p. 266, ch. 154.

Art. 8280—221. Hays County Wimberley Water Supply District

Acts 1959, 56th Leg., p. 360, ch. 175.

Art. 8280—222. Aquilla-Hackberry Creek Conservation District

Acts 1959, 56th Leg., p. 393, ch. 183.

Art. 8280—223. Bexar County (Oak Hills) Water Control and Improvement District

Acts 1959, 56th Leg., p. 440, ch. 198.

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

Art. 8280—224. Bexar County (Lackland) Water Control and Improvement District

Acts 1959, 56th Leg., p. 452, ch. 199.

Art. 8280—225. Bexar County (Northwest) Water Control and Improvement District

Acts 1959, 56th Leg., p. 461, ch. 200.

Art. 8280—226. Del Mar Conservation District

Acts 1959, 56th Leg., p. 492, ch. 220.

Art. 8280—227. Bell County Improvement District

Acts 1959, 56th Leg., p. 571, ch. 262.

Acts 1959, 56th Leg., 3rd C.S., p. 388, ch. 12. §§ 1, 2.

Art. 8280—228. Red River Authority of Texas

Acts 1959, 56th Leg., p. 604, ch. 279.

Art. 8280—229. Turkey Creek Conservation District

Acts 1959, 56th Leg., p. 619, ch. 281.

Art. 8280—230. Grayson County Water and Sewer Authority

Acts 1959, 56th Leg., p. 713, ch. 328.

Art. 8280—231. City of Bouham Water Authority

Acts 1959, 56th Leg., p. 730, ch. 333.

Art. 8280—232. Riesel Municipal Utility District

Acts 1959, 56th Leg., p. 744, ch. 338.

Art. 8280—233. Real-Edwards Conservation and Reclamation District

Acts 1959, 56th Leg., p. 749, ch. 341.

Art. 8280—234. Clear Creek Watershed Authority

Acts 1959, 56th Leg., p. 817, ch. 372.

Art. 8280—235. Pineland Municipal Water Supply District

Acts 1959, 56th Leg., p. 968, ch. 452.

Art. 8280—236. Mill Creek Water Control and Improvement District

Acts 1959, 56th Leg., p. 974, ch. 454.

Art. 8280—237. Galveston County Drainage District No. 4

Acts 1959, 56th Leg., p. 999, ch. 467.

Art. 8280—238. Valley Creek Water Control District

Acts 1959, 56th Leg., p. 1008, ch. 469.

**Art. 8280—239. Iron's Bayou Watershed Conservation District**

Acts 1959, 56th Leg., p. 1086, ch. 497.

**Art. 8280—240. Beason-Cedar Creek Watershed Authority**

Acts 1959, 56th Leg., p. 1105, ch. 503.

**Art. 8280—241. Coke County Kickapoo Water Control and Improvement District No. 1**

Acts 1959, 56th Leg., 1st C.S., p. 41, ch. 17.

**Art. 8280—242. Williamson County Water Supply District**

Acts 1959, 56th Leg., 2nd C.S., p. 119, ch. 23.

**Art. 8280—243. Palo Duro River Authority**

Acts 1959, 56th Leg., 2nd C.S., p. 132, ch. 26.

**Art. 8280—244. Mayfair Park Municipal Utility District**

Acts 1959, 56th Leg., 3rd C.S., p. 736, ch. 24.

**TITLE 130—WORKMEN'S COMPENSATION LAW****PART 1.****Art. 8306. Damages and compensation for personal injuries****Art. 8306, sec. 7d. Attorneys' Fees Regulated by the Court**

Sec. 7d. For representing the interest of any claimant in any manner carried from the Board into the courts, it shall be lawful for the attorney representing such interest to contract with any beneficiary under this law for an attorney's fee for such representation, not to exceed thirty percent (30%) of the amount recovered, such fee for services so rendered to be fixed and allowed by the trial court in which such matter may be heard and determined.

In fixing and allowing such attorney's fees the court must take into consideration the benefit accruing to the beneficiary as a result of such services. No attorney's fees (other than the amount which the Board may have approved) shall be allowed for representing a claimant in the trial court unless the court finds that benefits have accrued to the claimant by virtue of such representation, and then such attorney's fees may be allowed only on a basis of services performed and benefits accruing to the beneficiary.

Provided, however, that in all cases involving fatal injuries where the Association admits liability on all issues involved and tenders payment of maximum benefits in writing under this Act while the death benefits claim of such beneficiaries is pending before the Board, then no attorney fee shall be allowed. As amended Acts 1957, 55th Leg., p. 1186, ch. 397, § 1; Acts 1959, 56th Leg., p. 778, ch. 355, § 2.

Effective 90 days after May 12, 1959, date of adjournment.

**Art. 8306, sec. 15. Lump sum settlement**

Sec. 15. In cases where death or incapacity in any degree results from an injury, the liability of the association may be redeemed by the payment of a lump-sum by agreement of the parties thereto subject to the approval of the Industrial Accident Board. Where in the judgment of the Board manifest hardship and injury would otherwise result, the Board may compel the association to redeem the liability by payment of the award of the Board in a lump-sum, and a discount shall be allowed for present payment in accordance with Article 8306a, of the Revised Civil Statutes of 1925, as amended. As amended Acts 1959, 56th Leg., p. 783, ch. 357, § 1.

*Emergency.* Effective June 1, 1959.

Section 2 of the amendatory Act of 1959 contained a severability clause, section 3 repealed all conflicting laws and parts of laws, to the extent of such conflict.

**Art. 8306, sec. 25. Compensation for occupational disease; association liable when**

Sec. 25. The Association shall not be liable for any compensation for an occupational disease unless such disease shall be due to the nature of an

employment in which the hazards of such disease actually exist, and are characteristic thereof and peculiar to the trade, occupation, process, or employment, and is actually incurred in such employment, and unless incapacity or death results within three (3) years in the case of silicosis or asbestosis after the last injurious exposure to such disease in such employment, or one (1) year in the case of an occupational disease caused by exposure to x-rays or radioactive substances after the date upon which the employee first suffered incapacity therefrom and either knew, or in the exercise of reasonable diligence, should have known, that said disease was caused by his present or prior employment, or one (1) year in case of any other occupational disease, after the last injurious exposure to such disease in such employment; or, in case of death, unless death follows continuous incapacity from such disease commencing within the period above limited, for which compensation has been paid or awarded or timely claim made as provided in this Act, and occurs within three hundred and sixty (360) weeks after such last exposure. As amended Acts 1959, 56th Leg., p. 55, ch. 30, § 1.

Effective 90 days after May 12, 1959, date of adjournment.

#### PART 4.

#### Art. 8309. Definitions and general provisions

##### Art. 8309, sec. 1. Words and phrases defined

Section 1. The following words and phrases as used in this Act shall, unless a different meaning is plainly required by the context, have the following meanings, respectively:

"Employer" shall mean any person, firm, partnership, association of persons or corporations or their legal representatives that makes contracts of hire.

"Employee" shall mean every person in the service of another under any contract of hire, expressed or implied, oral or written, except masters of or seamen on vessels engaged in interstate or foreign commerce, and except one whose employment is not in the usual course of the trade, business, profession or occupation of his employer; provided that an employee who is employed in the usual course of the trade, business, profession or occupation of an employer and who is temporarily directed or instructed by his employer to perform service outside of the usual course of trade, business, profession or occupation of his employer is also an employee while performing such services pursuant to such instructions or directions; provided further, that such persons, other than independent contractors and their employees, as may be engaged in the work of the employer of enlargement, construction, remodeling or repairing of the premises or buildings used or to be used in the conduct of the business of the employer shall be deemed employees; and provided further, that any person, who may be performing or doing work or service that may be otherwise legally performed or done, shall be deemed an employee as herein defined and shall be entitled to receive compensation under the terms and provisions of this Act despite the fact that such person may not have secured a license, permit or certificate to perform or do such work or service as may be required by any Statute or municipal ordinance, or despite the fact that such person may have been performing or doing such work or service in violation of any wage law, hour law or Sunday law. Provided that this Section shall not be construed to relieve from fine or imprisonment any person, firm or corporation em-

ploying or performing any work or services prohibited by any Statute of this state or any valid municipal ordinance.

The words "legal beneficiaries" as used in this Act shall mean the relatives named in Section 8a, Part 1, of this Act.

"Association" shall mean the "Texas Employers' Insurance Association" or other insurance company authorized under this Act to insure the payment of compensation to injured employees or to the beneficiaries of deceased employees.

"Subscriber" shall mean any employer who has become a member of the association by paying the required premium; provided that the association holds a license issued by the Commissioner of Insurance, as provided for in Section 12, Part 3, of this Act.

"Average weekly wages" shall mean:

(1) If the injured employee shall have worked in the employment in which he was working at the time of the injury, whether for the same employer or not, for at least two hundred ten (210) days of the year immediately preceding the injury, his average weekly wage shall consist of three hundred (300) times the average daily wage or salary which he shall have earned during the days that he actually worked in such year, divided by fifty-two (52).

(2) If the injured employee shall not have worked in the employment in which he was working at the time of the injury, whether for the same employer or not, for at least two hundred ten (210) days of the year immediately preceding the injury, his average weekly wage shall consist of three hundred (300) times the average daily wage or salary which an employee of the same class, working at least two hundred ten (210) days of such immediately preceding year, in the same or in a similar employment, in the same or a neighboring place, shall have earned during the days that he actually worked in such year, divided by fifty-two (52).

(3) When by reason of the shortness of the time of the employment of the employee, or other employee engaged in the same class of work in the manner and for the length of time specified in the above Subsections 1 and 2, or other good and sufficient reasons, it is impracticable to compute the average weekly wages as above defined, it shall be computed by the Board in any manner which may seem just and fair to both parties, as of the date of injury.

(4) Said wages shall include the market value of board, lodging, laundry, fuel and other advantage which can be estimated in money which the employee receives from the employer as a part of his remuneration.

The term "injury sustained in the course of employment," as used in this Act, shall not include:

(1) An injury caused by an act of God, unless the employee is at the time engaged in the performance of duties that subject him to a greater hazard from an act of God responsible for the injury than ordinarily applies to the general public.

(2) An injury caused by an act of a third person intended to injure the employee because of reasons personal to him and not directed against him as an employee, or because of his employment.

(3) An injury received while in a state of intoxication.

(4) An injury caused by the employee's wilful intention and attempt to injure himself, or to unlawfully injure some other person, but shall include all other injuries of every kind and character having to do with and originating in the work, business, trade or profession of the employer received by an employee while engaged in or about the further-

ance of the affairs or business of his employer whether upon the employer's premises or elsewhere.

Any reference to any employee herein who has been injured shall, when the employee is dead, also include the legal beneficiaries, as that term is herein used, of such employee to whom compensation may be payable. The word "Board" whenever used in this Act shall be held to mean the Industrial Accident Board created by this Act. Whenever in this Act the singular is used, the plural shall be included; whenever the masculine gender is used, the feminine and neuter shall be included. As amended Acts 1959, 56th Leg., p. 778, ch. 355, § 1.

Effective 90 days after May 12, 1959, date of adjournment.

### **Art. 8309b. Agricultural and Mechanical College Directors, Workmen's Compensation Insurance for employees under**

#### **Laws governing**

Sec. 7. Unless otherwise provided herein, Sections 1; 6; 7; 7b; 7c; 7e; 8; 8a; 8b; 9; 10; 11; 11a; 12; 12a; 12b; 12c; 12d; 12e; 12f; 12i; 13; 15; 15a; 16; 17; 19; 20; 21; 22; 23; 24; 25; 26; and 27 of Article 8306, Revised Civil Statutes of Texas, 1925, as amended, and Article 8306a, Acts 1931, 42nd Legislature, as amended, and Sections 4a; 6a; 11; 12; 13; and 14 of Article 8307, of the Revised Civil Statutes of Texas, 1925, as amended, and Sections 4, and 5, of Article 8309, of the Revised Civil Statutes of Texas, 1925, as amended, are hereby adopted and shall govern insofar as applicable under the provisions of this law. Provided that whenever in the above adopted Sections of Articles 8306, 8307, and 8309 of the Revised Civil Statutes of Texas, 1925, as amended, or herein amended, the word "association," "subscriber," or "employer," or their equivalents appear in such Articles, they shall be construed to and shall mean "the institution." As amended Acts 1959 56th Leg., p. 644, ch. 297, § 1.

Emergency. Effective May 30, 1959.

### **Art. 8309d. University of Texas employees**

#### **Applicability of existing laws**

Sec. 7. Unless otherwise provided herein Sections 1, 6, 7, 7b, 7c, 7e, 8, 8a, 8b, 9, 10, 11, 11a, 12, 12a, 12b, 12c, 12d, 12e, 12f, 12i, 13, 15, 15a, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, and 27 of Article 8306, Revised Civil Statutes of Texas, 1925, as amended, and Chapter 248, page 415, Acts 1931, 42nd Legislature, as amended (codified as Article 8306a, Vernon's Civil Statutes of Texas), and Sections 4a, 6a, 11, 12, 13, and 14 of Article 8307, Revised Civil Statutes of Texas, 1925, as amended, and Sections 4 and 5 of Article 8309, Revised Civil Statutes of Texas, 1925, as amended, are hereby adopted and shall govern insofar as applicable under the provisions of this law. Provided that whenever in the above adopted Sections of Articles 8306, 8307, and 8309 of the Revised Civil Statutes of Texas, 1925, the words "association," "subscriber," or "employer" or their equivalent appear in such Articles they shall be construed to and shall mean "the institution." As amended Acts 1959, 56th Leg., p. 703, ch. 323, § 1.

Emergency. Effective May 30, 1959.

Section 2 of the amendatory Act of 1959 contained a severability clause.

# THE PENAL CODE

## TITLE 4—OFFENSES AGAINST THE STATE, ITS TERRITORY, AND REVENUE

### CHAPTER TWO—MISAPPLICATION OF PUBLIC MONEY

Art. 107a. Information by Clerk of Court to State Comptroller as to estate for inheritance taxes

Information by clerk of court to state taxes, see also, Title 122A, Taxation—General, art. 15.09.  
comptroller as to estate for inheritance

Art. 107b. Filing inheritance tax reports with State Comptroller

Failure to file inheritance tax report with state comptroller, see Title 122A, Taxation—General, art. 15.13.

## TITLE 6—OFFENSES AFFECTING THE RIGHT OF SUFFRAGE

### CHAPTER SIX—OFFENSES AFTER ELECTION

Art. 252. Repealed. Acts 1959, 56th Leg., p. 34, ch. 22, § 1. Eff. 90 days after May 12, 1959, date of adjournment.

Subject matter is now covered by V.A.T.S. Election Code, art. 14.08.

The preamble of Acts 1959, 56th Leg., p. 34, ch. 22 read as follows:

“WHEREAS, The Legislature in 1951 enacted, in the provisions of Chapter 14 of the Texas Election Code, a comprehensive Statute regulating election campaign expenditures and statements which candidates for office are required to file, which

was designed to replace prior Statutes relating to campaign expenditures and statements; and

WHEREAS, The failure of the Legislature to repeal the provisions on campaign expenditures appearing in the Penal Code of Texas has created a state of conflict and confusion in the law, which should be remedied by the repeal of the Penal Code provisions; now, therefore”.

### CHAPTER EIGHT—LIMITING EXPENDITURE IN PRIMARY ELECTION

Arts. 262–269. Repealed. Acts 1959, 56th Leg., p. 34, ch. 22, § 1. Eff. 90 days after May 12, 1959, date of adjournment

The subject matter of the repealed articles is covered by V.A.T.S. Election Code, art. 14.01 et seq.

Preamble of Acts 1959, 56th Leg., p. 34, ch. 22, see note under art. 252.



## TITLE 10—OFFENSES AGAINST MORALS, DECENCY AND CHASTITY

### CHAPTER SIX—PANDERING

#### Art. 519. "Pandering"

Any person who shall procure or attempt to procure or be concerned in procuring with or without her consent a female for prostitution, or who by promises, threats, violence or by any device or scheme shall cause, induce, persuade or encourage a female to engage in prostitution; or shall by fraud or artifice, or by duress of person or goods, or by abuse of any position of confidence or authority, procure any female person to become or remain a prostitute, or to come into or leave this state for the purpose of prostitution, or who shall procure any female person to engage in prostitution within this state, or to come into or leave this state for the purpose of prostitution, or who shall give or agree to receive or give any money or thing of value for procuring or attempting to procure any female person to engage in prostitution within this state, or to come into this state or leave this state, for the purpose of prostitution, shall be confined in the penitentiary for any term of years not less than two. As amended Acts 1959, 56th Leg., p. 696, ch. 318, § 1.

Emergency. Effective May 30, 1959.

## TITLE 11—OFFENSES AGAINST PUBLIC POLICY AND ECONOMY

### CHAPTER THREE—WIFE AND CHILD DESERTION

Art.

602—A. Subsequent conviction for desertion of wife or child; leaving state [New].

#### Art. 602. Desertion of wife or child

Any husband who shall wilfully desert, neglect or refuse to provide for the support and maintenance of his wife who may be in necessitous circumstances, or any parent who shall wilfully desert, neglect or refuse to provide for the support and maintenance of his or her child or children under eighteen years of age, shall be guilty of a misdemeanor, and upon conviction, shall be punished by confinement in the County Jail for not more than two years. As amended Acts 1959, 56th Leg., p. 504, ch. 222, § 1.

Effective 90 days after May 12, 1959, date of adjournment.

Section 2 of the amendatory Act of 1959, contained a severability clause.

Art. 602—A. Subsequent conviction for desertion of wife or child; leaving state

Any husband who has been convicted of the misdemeanor offense of deserting, neglecting or refusing to provide for the support and maintenance of his wife who may be in necessitous circumstances, or

any parent who has been convicted of the misdemeanor offense of deserting, neglecting, or refusing to provide for the support and maintenance of his or her child or children under eighteen years of age, and who shall thereafter wilfully desert, neglect or refuse to provide for the support and maintenance of his or her child or children under eighteen years of age, shall for each and every subsequent such violation be guilty of a felony; any husband who shall wilfully desert, neglect, or refuse to provide for support and maintenance of his wife who may be in necessitous circumstances, or any husband who shall wilfully desert, neglect, or refuse to provide for the support and maintenance of his child or children under eighteen years of age, and who shall desert said wife or children by leaving the State of Texas and by going into some other state, shall be guilty of a felony; and upon conviction shall be punished by confinement in the County Jail not less than ten days nor more than two years, or by confinement in the State Penitentiary for not more than five years. Added Acts 1959, 56th Leg., p. 504, ch. 222, § 1.

Effective 90 days after May 12, 1959, date of adjournment.

## CHAPTER FIVE—PRIZE FIGHTING, ROPING CONTESTS, ETC.

### Art. 614. 1511 Engaging in roping contest

Any person, who shall engage in a roping contest with other persons or alone, in which cattle or other animals are roped as a test or trial of skill of the person or persons engaged in such roping contest, for any money or prize of any character, or for any championship, for anything of value, or upon the result of which any money or anything of value is bet or wagered, shall be fined not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00). Each animal roped, or attempted to be roped, shall be a separate offense; provided, however, that nothing in this Act shall prevent roping contests without betting or wagering wherein calves or goats are roped as a test or trial of skill. As amended Acts 1959, 56th Leg., p. 807, ch. 364, § 1.

Effective 90 days after May 12, 1959, date of adjournment.

### Art. 614—1. Boxing or sparring contests; Commissioner of Labor; jurisdiction and powers; amateur associations and contests exempt

Texas Non-profit Corporation Act, see page 85.

## CHAPTER EIGHT—TEXAS LIQUOR CONTROL ACT

### II. MALT LIQUORS

Art. 667—23 $\frac{3}{8}$ . Collection of tax on beer declared unsalable; refund [New].

### I. INTOXICATING LIQUORS

#### Art. 666—3a. Definitions

(7) "Premise" shall mean the grounds as well as all buildings, vehicles, and appurtenances pertaining thereto, and shall also include any

adjacent premises, if directly or indirectly under the control of the same person; provided, however, that subject to the approval of the Board or Administrator, an Applicant may designate a portion of the grounds, buildings, vehicles, or appurtenances which shall not be a part of the Licensed Premise. As amended Acts 1959, 56th Leg., p. 956, ch. 444, § 1.

Effective 90 days after May 12, 1959, date of adjournment.

#### Art. 666—21. Fees and taxes

There is hereby levied and imposed on the first sale in addition to the other fees and taxes levied by this Act<sup>1</sup> the following:

(a) A tax of One Dollar and Sixty-eight Cents (\$1.68) per gallon on each gallon of distilled spirits, providing the minimum tax on any package of distilled spirits shall be \$0.105.

(b) A tax of \$0.132 on each gallon of vinous liquor that does not contain over fourteen per cent (14%) of alcohol by volume.

(c) A tax of \$0.264 on each gallon of vinous liquor containing more than fourteen per cent (14%) and not more than twenty-four per cent (24%) of alcohol by volume.

(d) A tax of \$0.330 on each gallon of artificially carbonated and natural sparkling vinous liquor.

(e) A tax of \$0.660 on each gallon of vinous liquor containing alcohol in excess of twenty-four per cent (24%) by volume.

(f) A tax of \$0.165 on each gallon of malt liquor containing alcohol in excess of four per cent (4%) by weight.

The term "first sale" as used in Article I of this Act shall mean and include the first sale, possession, distribution, or use in this State of any and all liquor refined, blended, manufactured, imported into, or in any other manner produced or acquired, possessed, or brought into this State.

The tax herein levied shall be paid by affixing a stamp or stamps on each bottle or container of liquor. Said stamps shall be affixed in strict accordance with any rule or regulation promulgated in pursuance of this Act; provided, however, any holder of a permit as a retail dealer as that term is defined herein shall be held liable for any tax due on any liquor sold on which the tax has not been paid.

It shall be the duty of each person who makes a first sale of any liquor in this State to affix said stamps on each bottle or container of liquor and to cancel the same in accordance with any rule and regulation of the Board. The Board shall have power to relax the foregoing provision when in its judgment it would be impracticable to require the affixing of such stamp on the bottle or container, irrespective of any other provision of this Act. And any person, persons, or association who violates any portion of this Section shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than One Hundred Dollars (\$100) nor more than One Thousand Dollars (\$1,000), or by imprisonment in the county jail for not less than thirty (30) days nor more than one (1) year. Every holder of a permit authorizing the wholesaling of liquor, upon receipt of a shipment of liquor for sale within this State, under the provisions of this Act, shall prepare and furnish such information and such reports as may be required by rules and regulations of the Board. Any person authorized to export liquor from this State having in his possession any liquor intended for shipment to any place without the State, shall keep such liquors in a separate compartment from that of liquors intended for sale within the State so that the same may be easily inspected and shall attach to each such package of

liquor so intended for shipment without the State a stamp of the kind and character that shall be required by proper rule or regulation denoting that the same is not intended for sale within the State. When such liquors are so kept and so stamped, no tax on account thereof shall be charged. For defraying the expenses thereof, a charge of twenty-five cents (25¢) shall be made for every such stamp, except that a charge of ten cents (10¢) shall be made for each such stamp placed on vinous or malt liquors of twenty-four per cent (24%) alcoholic content or less. All such permittees authorized to transport liquor beyond the boundaries of this State shall furnish to the Board duplicate copies of all invoices for the sale of such liquors, within twenty-four (24) hours after such liquors have been removed from their place of business. As amended Acts 1951, 52nd Leg., p. 695, ch. 402, § VIII, Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 2(1).

Effective Sept. 1, 1959.

1 Articles 666—1 et seq., 667—1 et seq.

Subsection 2 of section 2 of Act 1959, 56th Leg., 3rd C.S. p. 187, ch. 1, provided: "It is further provided that such portion of the tax provided by the amendment to Section 21 of the Texas Liquor Control Act by Subsection (1) of Section 2 of this Act which represents an increase in the tax rate on liquors shall apply and attach to all liquor which shall be in the possession of any person for the purpose of sale. Every person having possession of any liquor for the purpose of sale shall on the effective date of this Act render and submit to the Texas Liquor Control Board at Austin, Travis County, Texas, a true and correct sworn inventory of all such liquors, setting forth in detail the size of containers and the quantity thereof and shall attach to such sworn inventory a cashier's check or certified check payable to the State of Texas in an amount equal to the portion of said tax representing an increase in the tax rate on such liquor. The sworn inventory shall be rendered upon a form to be prescribed and furnished by the Texas Liquor Control Board. The sworn inventory with cashier's check or certified check

attached shall be placed in the United States mail, addressed to the Texas Liquor Control Board at Austin, Travis County, Texas, within twenty-four (24) hours after the effective date of this Act, and a true, correct and exact copy thereof must be retained by the person making such report. Failure or refusal to render and submit such inventory and cashier's check or certified check on or before the time specified above or the willful falsification of such inventory shall be deemed sufficient grounds for the cancellation of any permit or license by the Board. The copy of the sworn inventory and the purchaser's copy of the cashier's check or certified check retained by the person making such report shall be evidence of payment of the portion of the tax which represents an increase. The Texas Liquor Control Board is hereby authorized to adopt rules and regulations which may include provisions for the present stamps or stamps of the present denominations, to evidence payment of both the increase in the tax herein levied and the tax heretofore levied in the Texas Liquor Control Act as amended."

#### Art. 666—45. Printing and sale of stamps

(d) Refunds for liquor stamps may be made by the Board from the revenue derived from the sale of such stamps before the same has been allocated, and so much of such funds as may be necessary is hereby appropriated for that purpose. A refund may be made by the Board in all cases where stamped liquor is returned to the distillery or manufacturer upon certification by a duly authorized representative of the Board who inspected the shipment. The Board may also make a refund in all cases where stamped liquor has been destroyed upon certification by a duly authorized representative of the Board that such liquor has been destroyed. The Board may also make a refund to any person who has been authorized to purchase stamps, and who is in possession of unused liquor stamps upon discontinuation of business. The Board may also make a refund where stamps of improper value have been erroneously affixed to a bottle or container of liquor and such stamps have been destroyed in a manner prescribed by the Board. In any of the above instances, it must be shown that stamps for which a refund is asked were purchased from the State Treasurer and that the refund is made to a person authorized to purchase stamps

from the State Treasurer. No other refunds for liquor stamps shall be allowed. As amended Acts 1959, 56th Leg., p. 358, ch. 174, § 1.

Emergency. Effective May 18, 1959.

Section 3 of the amendatory Act of 1959 contained a severability clause.

## II. MALT LIQUORS

### Art. 667—3. License required

(a). A Manufacturer's License shall authorize the holder thereof to manufacture or brew beer and to distribute and sell same to others; and to dispense beer for consumption on manufacturer's premises; and shall also authorize the holder to bottle, can or pack into containers, beer for resale to any place in this state to others, regardless of whether such beer is manufactured or brewed in the State of Texas, or in any other state of the United States, and imported into Texas; provided that no beer shall be imported into this state except in accordance with the provisions of this Act, that is, in barrels, or other containers, and shall at no time be shipped into this state in tank cars; provided that the Texas Liquor Control Board shall have the same functions, powers, and duties to adopt and enforce a standard of quality, purity, and identity of malt beverages, and to promulgate all such rules and regulations as shall be deemed necessary to fully safeguard the public health and to insure sanitary conditions in the manufacturing, purifying, bottling, and rebottling of beer under a Manufacturer's License as apply to manufacturers located within the State of Texas. Every person, agent, receiver, trustee, firm, corporation, association, or co-partnership opening, establishing, operating, or maintaining one (1) or more establishments under a Manufacturer's License within this state under the same general management or ownership shall pay the license fees hereinafter prescribed for the privilege of opening, establishing, operating or maintaining such establishments. Each establishment bottling beer of the same brand or beer brewed by the same Manufacturer shall be held to be under a common management and control, and shall be subject to the license fees prescribed herein regardless of the nature of control or ownership of each separate establishment. The annual state license fees herein prescribed shall be as follows:

1. Upon one (1) establishment the license fee shall be Five Hundred Dollars (\$500.00);

2. Upon each additional establishment in excess of one (1), but not to exceed two (2), the license fee shall be One Thousand Dollars (\$1,000.00);

3. Upon each additional establishment in excess of two (2), but not to exceed five (5), the license fee shall be Two Thousand, Eight Hundred and Fifty Dollars (\$2,850.00);

4. Upon each additional establishment in excess of five (5), the license fee shall be Five Thousand, Six Hundred Dollars (\$5,600.00).

The provisions of this Act shall be construed to apply to every person, agent, receiver, trustee, firm, corporation, co-partnership or association, either domestic or foreign, which is controlled or held with others by majority stock ownership or ultimately controlled or directed by one (1) management or association of ultimate management. As amended Acts 1959, 56th Leg., p. 791, ch. 360, § 1.

Effective 90 days after May 12, 1959, date of adjournment.

Section 2 of the amendatory Act of 1959 contained a severability clause and section

3 repealed all conflicting laws and parts of laws to the extent of such conflict.

(b). General Distributor's License. A general distributor's license shall authorize the holder thereof to distribute or to sell beer to other general distributors, branch distributors, local distributors, retail dealers, ultimate consumers and others only in the unbroken original packages in which it is received by him from the manufacturer, general distributor, local distributor, or branch distributor and to serve free beer for consumption on the licensed premises. Annual state fee for a general distributor's license shall be Two Hundred Dollars (\$200.00). As amended Acts 1959, 56th Leg., p. 130, ch. 76, § 1.

Effective 90 days after May 12, 1959, date of adjournment.

(c). Local Distributor's License. A local distributor's license shall authorize the holder thereof to serve free beer for consumption on the licensed premises, and to sell and distribute beer to retail dealers and ultimate consumers in the county of his residence only in the unbroken original packages in which it is received by him from the manufacturer, general distributor, branch distributor, or another local distributor, and to sell and deliver beer to any other distributors licensed in this state to sell beer. Annual state fee for a local distributor's license shall be Fifty Dollars (\$50.00). As amended Acts 1959, 56th Leg., p. 130, ch. 76, § 2.

Effective 90 days after May 12, 1959, date of adjournment.

#### Art. 667—23<sup>1</sup>/<sub>8</sub>. Collection of tax on beer declared unsalable; refund

(a). It is not intended that the tax levied under Section 23 of this Act on beer manufactured or distributed in this state shall be imposed on or collected for beer which the Board, or Administrator, has found and declared to be unsalable for any reason. If such tax is paid on any such beer by a manufacturer or distributor, a claim for refund of such tax may be made at the time and in the manner prescribed by the Board or Administrator, and such tax shall be refunded to the manufacturer or distributor who has paid the same;

(b). If any manufacturer or distributor of beer through oversight, mistake, error, or miscalculation, has paid more tax on beer than is legally due thereon, the manufacturer or distributor who paid such excess tax shall be entitled to a refund thereof, and a claim for such refund may be made at the time and in the manner prescribed by the Board or Administrator, and such excess tax shall be refunded to the manufacturer or distributor who has paid the same, or credit may be allowed on future tax payment.

(c). Refunds for beer tax may be made by the Board from the revenues derived from the collection of such tax before the same has been allocated, and so much of such funds as may be necessary is hereby appropriated for that purpose. Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 2, § 23-A, added Acts 1959, 56th Leg., p. 358, ch. 174, § 2.

Emergency. Effective May 13, 1959.

Tex.St.Supp. '60—51

## TITLE 12—PUBLIC HEALTH

## CHAPTER THREE—DRUGS, NARCOTICS AND POISONS

Art.  
726b, 726c. Repealed.  
726d. Dangerous drugs [New].

Arts. 726b, 726c. Repealed. Acts 1959, 56th Leg., p. 923, ch. 425, § 16.  
Effective 90 days after May 12, 1959, date of adjournment

Article 726b was derived from Acts 1949, 51st Leg., p. 912, ch. 490, as amended by Acts 1955, 54th Leg., p. 1026, ch. 385, § 3 and related to the sale of barbiturates. See, now, art. 726d.

Article 726c was derived from Acts 1951, 52nd Leg., p. 758, ch. 413, as amended by Acts 1955, 54th Leg., p. 1026, ch. 385, § 2 and Acts 1955, 54th Leg., p. 1215, ch. 486, §§ 2-6 and related to handling, sale and distribution of barbiturates. See, now, art. 726d.

The Court of Criminal Appeals held that this section, insofar as it attempted to make the possession and delivery of amphetamine and desoxyedrine and compounds thereof unlawful was void for indefiniteness and uncertainty. See *Harrell v. State*, Cr.App., 314 S.W.2d 590; *Hughes v. State*, Cr.App., 317 S.W.2d 55; *Watts v. State*, Cr.App., 318 S.W.2d 75.

## Art. 726d. Dangerous drugs

## Intent of legislature

Section 1. The Legislature of the State of Texas hereby finds that it is essential to the public health and safety to regulate and control the handling, sale and distribution of "dangerous drugs," as defined in this Act.

It is, therefore, hereby declared to be the policy and intent of the Legislature of the State of Texas and the purpose of this Act to regulate and control such handling, sale, and distribution, and, in particular, but without limitation of such purpose, to insure that the public shall receive the therapeutic benefits of "dangerous drugs" under medical supervision to the full extent required to assure safety and efficiency in their use; to complement and supplement the Laws and Regulations of the Congress of the United States and the appropriate agencies of the Federal Government affecting such handling, sale, and distribution; to prevent such handling, sale or distribution for harmful or illegitimate purposes; and to place upon manufacturers, wholesalers, licensed compounders of prescriptions, and persons prescribing such drugs, a basic responsibility for preventing the improper distribution of such drugs to the extent that such drugs are produced, handled, sold, or prescribed by them.

## Definitions

Sec. 2. For the purposes of this Act:

(a) The term "dangerous drug" means any drug unsafe for self medication, except preparations of drugs defined in subdivisions (a)(5), (a)(6), (a)(8), and (a)(9) hereof, designed for the purpose of feeding or treating animals (other than man) or poultry, and so labeled, and includes the following:

(1) Any barbiturate or other hypnotic drug. "Barbiturate or hypnotic drug" includes acetyluric derivatives, barbituric acid derivatives, chloral,

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

paraldehyde, sulfonmethane derivatives, or any compounds or mixtures or preparation that may be used for producing hypnotic effects.

(2) Amphetamine, desoxyephedrine, or compounds or mixtures thereof, except preparations for use in the nose and unfit for internal use.

(3) Aminopyrine, or compounds or mixtures thereof.

(4) Cinchophen, neocinchophen, or compounds or mixtures thereof.

(5) Diethyl-stilbestrol, or compounds or mixtures thereof.

(6) Ergot, cotton root, or their contained or derived active compounds or mixtures thereof.

(7) Oils of croton, rue, savin or tansy or their contained or derived compounds or mixtures thereof.

(8) Sulfanilamide or substituted sulfanilamides, or compounds or mixtures thereof, except preparations for topical application only containing not more than five percent (5%) strength.

(9) Thyroid and its contained or derived active compounds or mixtures thereof.

(10) Phenylhydantoin derivatives.

(11) Any drug which bears the legend: "Caution: Federal Law prohibits dispensing without prescription."

(12) Barbiturates or hypnotic drugs when combined and compounded with non-barbiturates or non-hypnotic drugs.

Provided, however, that preparations which contain certain other drugs, not covered by the provisions of this Act, other than those dangerous drugs specified in Section 2(a) (2) through (11) inclusive, in sufficient proportion to confer upon the preparation qualities other than those possessed by the dangerous drugs alone are exempt from the provisions of this Act.

(b) The term "delivery" means sale, dispensing, giving away, or supplying in any other manner.

(c) The term "patient" means, as the case may be:

(1) The individual for whom a dangerous drug is prescribed or to whom a dangerous drug is prescribed or to whom a dangerous drug is administered; or

(2) The owner or the agent of the owner of the animal for which a dangerous drug is prescribed or to which a dangerous drug is administered.

(d) The term "person" includes individual, corporation, partnership, and association.

(e) The term "practitioner" means a person licensed by the State Board of Medical Examiners, State Board of Dental Examiners, State Board of Chiropractic Examiners, and State Board of Veterinary Medical Examiners to prescribe and administer dangerous drugs.

(f) The term "pharmacist" shall mean a person licensed by the State Board of Pharmacy to practice the profession of pharmacy and to prepare, compound, and dispense physicians' prescriptions, drugs, medicines, and poisons.

(g) The term "prescription" means a written order, and in cases of emergency, a telephonic order, by a practitioner to a pharmacist for a dangerous drug for a particular patient, which specifies the date of its issue, the name and address of the patient (and, if such dangerous drug is prescribed for an animal, the species of such animal), the name and quantity of the dangerous drug prescribed, and the directions for use of such drug.



(h) The term "manufacturer" means persons other than pharmacists who manufacture dangerous drugs, and includes persons who prepare such drugs in dosage forms by mixing, compounding, encapsulating, enteric coating, or other process.

(i) The term "wholesaler" means persons engaged in the business of distributing dangerous drugs to persons included in any of the classes named in subdivisions (1) to (6) inclusive of Section 4.

(j) The term "warehouseman" means persons who store dangerous drugs for others and who have no control over the disposition of such dangerous drugs except for the purpose of such storage.

(k) The term "Board" means Texas State Board of Pharmacy.

#### Unlawful acts and omissions

Sec. 3. The following acts, the failure to act as hereinafter set forth, and the causing of any such act or failure are hereby declared unlawful, except as provided in Section 4:

(a) The delivery of any dangerous drug unless:

(1) Such dangerous drug is delivered by a pharmacist, upon an original prescription, and there is affixed to the immediate container in which such drug is delivered a label bearing the name and address of the owner of the establishment from which such drug was delivered; the date on which the prescription for such drug was filled; the number of such prescription as filed in the prescription files of the pharmacist who filled such prescription; the name of the practitioner who prescribed such drug; the name and address of the patient, and if such drug was prescribed for an animal, a statement showing the species of the animal; and the directions for use of the drug as contained in the prescription; or

(2) Such dangerous drug is delivered by a practitioner in the course of his practice and the immediate container in which such drug is delivered bears a label on which appears the directions for use of such drug, the name and address of such practitioner, the name and address of the patient, and, if such drug is prescribed for an animal, a statement showing the species of the animal.

(b) The refilling of any prescription for a dangerous drug, unless and as designated on the prescription by the practitioner, or through authorization by the practitioner at the time of refilling.

(c) The delivery of a dangerous drug upon prescription unless the pharmacist who filled such prescription files and retains it as required in Section 6.

(d) The possession of a barbiturate or hypnotic drug, as well as those drugs set forth in Section 2(a) (2) hereof, by any person unless such person obtained the drug under the specific provision of Section 3(a) (1) and (2) of this Act and possesses the drug in the container in which it was delivered to him by the pharmacist or practitioner selling or dispensing the same; and any other possession of a barbiturate or hypnotic drug, as well as those drugs set forth in Section 2(a) (2) hereof, shall be prima facie evidence of illegal possession.

(e) The refusal to make available and to accord full opportunity to check any record or file as required by Section 6 and Section 7.

(f) The failure to keep records as required by paragraph (a) or (b) of Section 6 and Section 7.

(g) The using of any person to his own advantage, or revealing, other than to an officer or employee of the State Board of Pharmacy, or to a court when relevant in a judicial proceeding under this Act, any information required under the authority of Section 6, concerning any method or process which as a trade secret is entitled to protection.

**Applicability of paragraphs (a) and (d) of section 3**

Sec. 4. The provisions of paragraphs (a) and (d) of Section 3 shall not be applicable:

(a) As to the delivery of dangerous drugs to persons included in any of the classes hereinafter named, or to the agents or employees of such persons, for use in the usual course of their business or practice or in the performance of their official duties, as the case may be; or

(b) To the possession of dangerous drugs by such persons or their agents or employees for such use:

(1) Pharmacy, drug store, dispensary, apothecary shop, or prescription laboratory, duly registered with the State Board of Pharmacy;

(2) Practitioners;

(3) Persons who procure dangerous drugs for disposition by or under the supervision of pharmacists or practitioners employed by them; or for the purpose of lawful research, teaching, or testing, and not for resale;

(4) Hospitals which procure dangerous drugs for lawful administration by practitioners;

(5) Officers or employees of Federal, State, or local government;

(6) Manufacturers and Wholesalers;

(7) Carriers and Warehousemen.

**Duties of exempt persons**

Sec. 5. Persons (other than carriers) exempt from the provisions of paragraphs (a) and (b) of Section 3 by virtue of Section 4 shall:

(a) (1) Make a complete record of all stocks of barbiturates or other hypnotic drugs, as well as those drugs set forth in Section 2(a)(2) hereof, on hand on the effective date of this Act, and retain such record for not less than two (2) calendar years immediately following such date, and

(2) Retain each commercial or other record relating to barbiturates or other hypnotic drugs, as well as those drugs set forth in Section 2(a)(2) hereof, maintained by them in the usual course of their business or occupation, for not less than two (2) calendar years immediately following the date of such record, to create and maintain a perpetual record of the purchases of barbiturates or other hypnotic drugs, as well as those drugs set forth in Section 2(a)(2) hereof.

(b) Pharmacies as set forth in Section 4(b)(1) shall, in addition to complying with the provisions of subsection (2) above, retain each prescription for a barbiturate or other hypnotic drug, as well as those drugs set forth in Section 2(a)(2) hereof, received by them for not less than two (2) calendar years immediately following the date of the filling or the date of the last refilling of such prescription, whichever is the later date, to create and maintain a perpetual record of the sales of barbiturates or other hypnotic drugs, as well as those drugs set forth in Section 2(a)(2) hereof.

**Files or records; inspection; inventory of drugs**

Sec. 6. Persons required to keep files or records relating to barbiturate or other hypnotic drugs, as well as those drugs set forth in Section 2(a)(2) hereof, by Section 5 shall, upon the written request of an officer or employee duly designated by the State Board of Pharmacy:

(1) Make such files or records available to such officer or employee, at all reasonable hours, for inspection and copying; and

(2) Accord to such officer or employee full opportunity to make inventory of all stocks of barbiturates or other hypnotic drugs, as well as

those drugs set forth in Section 2(a)(2) hereof, on hand; and it shall be unlawful for any such person to fail to make such files or records available or to accord such opportunity to check their correctness.

**Contracts for purchases from or sales by out-of-state persons; forwarding copies of orders to State Board of Pharmacy**

Sec. 7. When any pharmacy as defined in Article 4542a, Vernon's Annotated Civil Statutes, or pharmacist as defined herein, in this State, gives any order to or makes any contract or agreement for purchases from or sales by any out-of-state person, firm, or corporation, of any barbiturate or other hypnotic drugs, as well as those drugs set forth in Section 2(a)(2) hereof, for delivery in this State, the purchaser shall forward a copy of the original order to the out-of-state person, firm, or corporation; a copy to the State Board of Pharmacy; and retain a copy for not less than two (2) years. The copy required to be sent to the State Board of Pharmacy shall be forwarded to the State Board of Pharmacy at the same time the order is forwarded to the out-of-state person, firm, or corporation.

**Unlawful manufacture, sale or possession; seizure and confiscation; statement of destruction**

Sec. 8. All dangerous drugs as herein defined, manufactured, sold, or had in possession contrary to any provision hereof shall be and the same are declared to be contraband and shall be subject to seizure and confiscation by any officer or employee of the Board or by any peace officer who is authorized to and charged with the duty of enforcing the provisions of this Act.

All dangerous drugs seized and confiscated under the provisions of this Act by any officer or employee of the Board, or by any peace officer, may, at the discretion of the Board be destroyed in such manner as the Board deems appropriate. Prior to any such destruction, an inventory shall be made of the dangerous drug or drugs to be destroyed and such inventory shall be accompanied by a statement, sworn and subscribed to, that such dangerous drugs are being destroyed at the direction of the Board by an officer or employee of the Board and in the presence of another officer or employee of the Board. The persons in attendance at the time of such destruction shall be specified and in what capacity they are acting and shall sign such statement and attest to the correctness of same. Such signed statement shall be filed with the State Board of Pharmacy.

**Injunction**

Sec. 9. The Board shall have the right to institute an action in its own name to enjoin the violation of any of the provisions of this Act. Said action for an injunction shall be in addition to any other action, proceedings, or remedy authorized by law.

**Proceedings instituted by board; employment of private counsel**

Sec. 10. Any legal proceedings instituted under the provisions of this Act by the Board shall be by any county attorney, district attorney, or the Attorney General. The Board is hereby specifically prohibited from employing private counsel in any legal proceedings instituted by or against said Board under the provisions of this Act.

**Conviction upon uncorroborated testimony of accomplice**

Sec. 11. Upon a trial for a violation of any of the provisions of this Act, a conviction may be had upon the uncorroborated testimony of an accomplice.

**Denial of exceptions, excuses, provisos or exemptions in complaint, information or indictment; burden of proof**

Sec. 12. In any complaint, information, or indictment, and in any action or proceeding brought for the enforcement of any provisions of this Act, it shall not be necessary to negative any exception, excuse, proviso, or exemption contained in this Act, and the burden of proof of any such exception, excuse, proviso, or exemption shall be upon the defendant.

**Using minor as agent**

Sec. 13. Any person who violates any provision of this Act by use of a minor as an agent, or who unlawfully furnishes any dangerous drug, as that term is defined herein, shall be deemed in violation of this Act, and subject to the penalties prescribed for the violation of provisions of this Act.

**Forging or altering prescriptions**

Sec. 14. Every person who forges or increases the quantity of dangerous drugs in any prescription or who issues a prescription bearing a forged or fictitious signature for any dangerous drug, or who obtains any dangerous drug by any forged, fictitious, or altered prescription, or who obtains any dangerous drug by means of fictitious or fraudulent telephone calls, or who has in his possession any dangerous drug secured by such forged, fictitious, or altered prescription or through the means of a fictitious or fraudulent telephone call, shall be deemed in violation of this Act, and subject to the penalties prescribed for the violation of provisions of this Act.

**Penalties**

Sec. 15. Any person, firm, or corporation violating any of the provisions of this Act shall be fined an amount not exceeding Three Thousand Dollars (\$3,000) or confined in jail for a period of not less than thirty (30) days nor more than two (2) years, or by such fine and imprisonment. For any second or subsequent violation of this Act, any person so violating the same shall be confined in the penitentiary not less than two (2) years nor more than ten (10) years; provided that upon any second or subsequent conviction the benefits of the suspended sentence law shall not be available to a defendant convicted for a violation of the provisions of this Act; provided further that any person convicted of any second or subsequent violation of this Act shall be entitled to the benefits of probation under the Adult Probation and Parole Law, as provided therein. Acts 1959, 56th Leg., p. 923, ch. 425.

Effective 90 days after May 12, 1959, date of adjournment.

Section 17 of the Act of 1959 contained a severability clause.

## CHAPTER SEVEN—DENTISTRY

Art.

754c. Prescription required [New].

## Art. 754a. Persons regarded as practicing dentistry

(6). Who makes, fabricates, processes, constructs, produces, reproduces, duplicates, repairs, relines, or fixes any full or partial denture, any fixed or removable dental bridge or appliance, any dental plate or plates of false teeth, any artificial dental restoration, or any substitute or corrective device or appliance for the human teeth, gums, jaws, mouth, alveolar process, or any part thereof for another, or who in any manner offers, undertakes, aids, abets, or causes another person so to do for another, without a written prescription or work-order therefor signed by the dentist legally engaged in the practice of dentistry in this state or in the jurisdiction where such dentist maintains his dental office and who prescribed and ordered same. Added Acts 1959, 56th Leg., p. 668, ch. 309, § 5.

(7). Who offers, undertakes, solicits, or advertises in any manner for himself or for another except in person or by agent to a dentist, or through the United States mail to a dentist, or in regularly published dental publications mailed or delivered to dentists in this state or in other jurisdictions to do or perform any of the acts or services listed in any of the subsections of this Article and except to and for such dentists. Added Acts 1959, 56th Leg., p. 668, ch. 309, § 5.

Emergency. Effective May 30, 1959.

Persons regarded as practicing dentistry, see also Vernon's Ann.Civ.St. art. 4551a.

## Art. 754c. Prescription required

From and after the effective date of this Act every dentist requiring the making, fabricating, processing, constructing, producing, reproducing, duplicating, repairing, relining, or fixing of any full or partial denture, any fixed or removable dental bridge or appliance, any dental plate or plates of false teeth, any artificial dental restoration or any substitute or corrective device or appliance for the human teeth, gums, jaws, mouth, alveolar process, or any part thereof, shall prepare and deliver a prescription or work-order for same directed to the person, firm, or association, or other business entity which is to perform such work or service and such work-order or prescription shall contain (1) the signature and Texas dental license number of such dentist; (2) the date such was signed; (3) the name and address of the patient for whom the act or service is ordered; and (4) a description of the kind and type of act, service, or material ordered. It shall be the duty of each dentist to keep a copy of each work-order or prescription for a period of two years, and maintain a separate file therefor in his dental office which shall be available for inspection by the officers, agents, or employees of the Texas State Board of Dental Examiners. Added Acts 1959, 56th Leg., p. 668, ch. 309, § 3.

Emergency. Effective May 30, 1959.

Prescriptions or work-orders for dentures, see Vernon's Ann.Civ.St. art. 4551g.

Repeal of conflicting laws and parts of laws, except art. 753 by Acts 1959, 56th Leg., p. 668, ch. 309, § 6, see note under Vernon's Ann.Civ.St. art. 4551f.

## CHAPTER ELEVEN—MISCELLANEOUS

Art.

782b. Entry of private residence for health inspection; necessity of permission or authority; inadmissibility of evidence; penalties [New].

Art. 782b. Entry of private residence for health inspection; necessity of permission or authority; inadmissibility of evidence; penalties

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

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

Sec. 3. If any person shall knowingly turn over any evidence obtained in violation of Section 1 of this Act to the Government of the United States or any agency or instrumentality thereof such person shall be punished by confinement in the county jail for a period not to exceed one (1) year or by a fine not to exceed Five Hundred Dollars (\$500) or by both such fine and imprisonment. Acts 1959, 56th Leg., 2nd C.S., p. 156, ch. 36.

Effective 90 days after July 16, 1959, date of adjournment.

Section 2 of the Act of 1959 repealed all conflicting laws and parts of laws to the

extent of such conflict. Section 5 contained a severability clause.

Entry on premises for purpose of health inspection, see Vernon's Ann.Civ.St. art. 4220.

TITLE 13—OFFENSES AGAINST PUBLIC PROPERTY

CHAPTER ONE—HIGHWAYS AND VEHICLES

Art. 821a. Identification of city and county-owned vehicles and heavy equipment [New].  
827a—1. Repealed.

Art. 827a—4. Length of vehicles transporting electric power transmission poles; fee; time of operation [New].

Art. 821a. Identification of city and county-owned vehicles and heavy equipment

On every city or county-owned motor vehicle and piece of heavy equipment, there shall be printed upon each side the name of the city or county, followed in letters of not less than two (2) inches high by the title of the department or official having the custody of the vehicle or piece of heavy equipment, and the inscription shall be in a color sufficiently different from the body of the vehicle or piece of heavy equipment so that the lettering shall be plainly legible, and the official having control thereof shall have the wording placed thereon as prescribed herein, and whoever drives any motor vehicle or piece of heavy equipment belonging to any city or county upon the streets of any town or city or upon a public highway without the inscription printed thereon shall be fined not less than Twenty-five Dollars (\$25) nor more than One Hundred Dollars (\$100). Provided however, that the provisions of this Section shall not apply to automobiles used by police and sheriffs' departments, which shall be unmarked at the discretion of the sheriff or the police chief. Provided further, that the provisions of this Section shall not apply to any county or counties having a population of three hundred and fifty thousand (350,000) or more, according to the last preceding Federal Census. Acts 1959, 56th Leg., p. 531, ch. 235, § 1.

Effective 90 days after May 12, 1959, date of adjournment. Municipal regulations, see Vernon's Ann. Civ.St. art. 6698.

Art. 827a. Regulating operation of vehicles on highways

Art. 827a, sec. 5. Weight of load

Sec. 5. Except as otherwise provided by law, no commercial motor vehicle, truck-tractor, trailer or semitrailer, nor combination of such vehicles, shall be operated over, on, or upon the public highways outside the limits of an incorporated city or town, having a weight in excess of one or more of the following limitations:

(1) No group of axles shall carry a load in pounds in excess of the value given in the following table corresponding to the distance in feet between the extreme axles of the group, measured longitudinally to the nearest foot:

Distance in feet between the extremes of any group of axles	Maximum load in pounds carried on any group of axles
4 .....	32,000
5 .....	32,000
6 .....	32,000
7 .....	32,000

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

Distance in feet between the extremes of the group of axles	Maximum load in pounds carried on any group of axles
8	33,700
9	35,400
10	37,100
11	38,800
12	40,600
13	42,300
14	44,000
15	45,500
16	47,000
17	48,400
18	49,900
19	51,400
20	52,800
21	54,300
22	55,800
23	57,200
24	58,700
25	59,650
26	60,600
27	61,550
28	62,500
29	63,450
30	64,400
31	65,350
32	66,300
33	67,250
34	68,200
35	69,150
36	70,100
37	71,050
38	72,000
39	72,000
40	72,000
41	72,000
42	72,000
43	72,000
44	72,000
45	72,000
46	72,000

The weights set forth in column two of the above table shall constitute the maximum permissible gross weight for any such vehicle or combination of such vehicles.

(2) In no event shall the total gross weight, with load, of any vehicle or combination of vehicles, exceed seventy-two thousand (72,000) pounds.

(3) No axle shall carry a load in excess of eighteen thousand (18,000) pounds. An axle load shall be defined as the total load transmitted to the road by all wheels whose centers may be included between two (2) parallel transverse vertical planes forty (40) inches apart, extending across the full width of the vehicle.

(4) No such vehicle nor combination of vehicles shall have a greater weight than six hundred (600) pounds per inch width of tire upon any wheel concentrated upon the surface of the highway and using high-



pressure tires, and a greater weight than six hundred and fifty (650) pounds per inch width of tire upon any wheel concentrated upon the surface of the highway and using low-pressure tires, and no wheel shall carry a load in excess of eight thousand (8,000) pounds on high-pressure tires and nine thousand (9,000) pounds on low-pressure tires, nor any axle a load in excess of sixteen thousand (16,000) pounds on high-pressure tires, and eighteen thousand (18,000) pounds on low-pressure tires. The total gross weight concentrated on the highway surface from any tandem axle group shall not exceed thirty-two thousand (32,000) pounds for each such tandem axle group. Tandem axle group is defined to be two (2) or more axles spaced forty (40) inches or more apart from center to center having at least one (1) common point of weight suspension. As amended Acts 1951, 52nd Leg., p. 248, ch. 146, § 1; Acts 1959, 56th Leg., p. 160, ch. 94, § 1.

Sections 3 and 4 of Acts 1959, 56th Leg., p. 160, ch. 94 provided:

"Sec. 3. Nothing in this Act shall be construed as in any manner repealing, modifying or amending Section 1¼, Chapter 146, Acts, 52nd Legislature, Regular Session, 1951 and codified as Section 5½ of Article 827a, Vernon's Penal Code relative to the powers of the Highway Commission over the weight limits on certain Farm-to-Market or Ranch-to-Market Roads); or House Bill No. 11, Acts, 52nd Legislature, Regular Session, 1951, Chapter 116, as amended and codified as Section 6,

of Article 827a, Vernon's Penal Code (being the motor vehicle unloading statute); or Section 1, Chapter 109, Acts, 54th Legislature, Regular Session, 1955, and codified as Article 827a-2, Vernon's Penal Code (dealing with ready-mix concrete trucks).

"Sec. 4. Nothing in this Act shall in anywise alter, amend or repeal any law of this state authorizing or providing for special permits for weights in excess of those provided by this Act."

Section 5 of the amendatory Act of 1959 contained a severability clause.

#### Art. 827a, sec. 5½. Farm-to-Market and Ranch-to-Market roads— Highway commission to fix loads

Sec. 5½. The State Highway Commission shall have the power and authority upon the basis of an engineering and traffic investigation to determine and fix the maximum gross weight of vehicle, or combination thereof, and load as well as the maximum axle and wheel loads, to be transported or moved on, over or upon any State highway or any road that has been classified by the Highway Commission and shown by the records of the Commission as a Farm-to-Market or Ranch-to-Market Road under the jurisdiction of the State Highway Commission, at less than the maximums hereinbefore fixed by law, taking into consideration the width, condition and type of pavement structures and other circumstances on such road, when it is found that greater maximum weights would tend to rapidly deteriorate or destroy the roads, bridges or culverts along the particular road or highway sought to be protected. Whenever the State Highway Commission shall determine and fix the maximum gross weight of vehicle, or combination thereof, and load or maximum axle and wheel loads, which may be transported or moved on, over or upon any such State Highway or Farm-to-Market or Ranch-to-Market road at a less weight than the respective maximums hereinbefore set forth in this Act and shall declare such maximums by proper order of the Commission entered on its minutes, such gross weight of vehicle, or combination thereof, and load and maximum axles and wheel loads shall become effective and operative on said highway or road when appropriate signs giving notice thereof are erected under the order of the Commission on such State highway or Farm-to-Market or Ranch-to-Market road.

The Commissioners Court of any county shall have the same power and authority to limit the maximum weights to be transported or moved on, over or upon any county road, bridge or culvert that is given by this

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Act to the State Highway Commission with respect to State highways and State Farm-to-Market and Ranch-to-Market roads. The Commissioners Court shall exercise its authority with respect to county roads in the same manner and under the same conditions as provided herein for the State Highway Commission with respect to highways and roads under its jurisdiction, and its action shall be entered on its minutes and become effective and operative on county roads when appropriate signs giving notice thereof are erected on such roads in accordance with the order of the Commissioners Court.

It shall be unlawful for and constitute a misdemeanor for any person, corporation, receiver or association to drive, operate or move, or for the owner to cause or permit to be driven, operated or moved, on any such highway or road any vehicle, or combination of vehicles, which in any respect exceeds the maximum gross weight or maximum axle or wheel loads fixed for any such highway or road by the State Highway Commission or a Commissioners Court in accordance with the terms of this Section. Any person, corporation, receiver or association who commits the violation heretofore set out shall, upon conviction, be subject to and punished by the same fines and penalties for the first and subsequent offenses as are set out in Section 5 of House Bill No. 19, Chapter 71, Acts of the Forty-seventh Legislature, Regular Session, 1941, (codified in Vernon's as Section 9c of Article 827a of the Penal Code).

Provided, however, that nothing in this Act shall in anywise alter, amend or repeal any law of this State authorizing or providing for special permits for weights in excess of those provided by law or fixed under this Act.

Provided, further, that this Section shall not apply to vehicles making deliveries of groceries or farm products to destinations requiring travel over such roads; but, if for any reason this exception is unconstitutional or invalid, it is the intention of the Legislature to enact, and it does here and now enact and pass, this Act without such exception; and if it be invalid, such exception alone shall fall and be held for naught, and the remainder of the Act shall be and remain unimpaired, and it is so enacted. Added Acts 1951, 52nd Leg., p. 248, ch. 146, § 1¼, as amended Acts 1959, 56th Leg., p. 1109, ch. 504, § 1.

Emergency. Effective June 1, 1959.

Section 2 of the amendatory Act of 1959 repealed art. 834 and section 3 contained a severability clause.

**Art. 827a—1. Repealed. Acts 1959, 56th Leg., p. 160, ch. 94, § 2. Eff. Jan 1, 1960**

Art. 827a—1 was derived from Acts 1951, 52nd Leg., p. 248, ch. 146, § 2 and related to gross weights of commercial motor vehicles and combinations of vehicles. The subject matter is now covered by art. 827a, § 5.

**Art. 827a—4. Length of vehicles transporting electric power transmission poles; fee; time of operation**

Section 1. Notwithstanding other provisions of the Statutes governing the length of motor vehicles and combinations thereof and the provisions of the Statutes controlling the distance which a load may extend beyond the front or rear of a vehicle or combination of vehicles which may be operated over the highways and roads, it shall be lawful to operate such vehicles and combinations thereof where the combined length of the vehicle or combination of vehicles and its load does not

exceed seventy-five (75) feet in length and where such vehicles or combinations thereof are used exclusively for the transport of poles required for the maintenance of electric power transmission and distribution lines; provided, however, the operator of any such vehicle or combination of vehicles must pay to the State Highway Department the sum of One Hundred and Twenty Dollars (\$120) per calendar year.

Sec. 2. Such vehicles may be operated only between the hours of sunrise and sunset, as defined by law, and at a rate of speed not greater than thirty-five (35) miles per hour; and provided further, that there shall at all times be displayed at the extreme rear end of the load carried on such vehicles a red flag or cloth not less than twelve (12) inches square and so hung that the entire area is visible to the driver of a vehicle approaching from the rear.

Sec. 3. The width, height and gross weight of each such vehicle or combination thereof shall conform to the requirements of Article 827a, Revised Penal Code of Texas. Acts 1959, 56th Leg., p. 483, ch. 212.

Emergency. Effective Jan. 1, 1960.

Section 4 of the Act of 1959 repealed all conflicting laws and parts of laws and section 5 contained a severability clause.

Fees for commercial motor vehicles or truck-tractors, see art. 6675a—6.

Permits for heavy trucks on highways, see art. 6701a.

Width, length and height of vehicles, see art. 827a, sec. 3.

## CHAPTER TWO—PUBLIC ROADS AND IRRIGATION

Art. 834. Repealed. Acts 1959, 56th Leg., p. 1109, ch. 504, § 2. Eff. June 1, 1959.

See, now, art. 827a, § 5½.

## CHAPTER SIX—GAME, FISH AND OYSTERS

Art.

879g—4. Penalty.

879h—1. Archery season on buck deer, bear, turkey and collared peccary or javelina [New].

879h—2. Possessing firearm or crossbow while hunting during archery season [New].

879h—3. Bows and arrows; specifications; use; violations; penalties [New].

879h—4. Deer, definition [New].

879h—5. Length of archery season [New].

Art.

880c. Morris County; hunting with dogs [New].

941—2. Using nets for fish and shrimp in Matagorda Bay and Gulf of Mexico [New].

952aa—4. Fishing in Murvaul Lake in Pannola County; violations; penalties [New].

978f—6. Reciprocal agreements; fishing and hunting on waters located upon common boundaries with other states [New].

Art. 879g—2a. Collared peccary or javelina in Jim Hogg, Dimmit, Frio, Kinney, and other counties

It shall be lawful to take, capture, shoot, or kill collared peccary or javelina at any time in the Counties of Jim Hogg, Dimmit, Frio, Kinney, La Salle, Maverick, McMullen, Starr, Upton, Uvalde, Val Verde, Webb, Zapata, and Zavala; provided, however, that it shall be unlawful in any of the aforesaid Counties to have or take any collared peccary or javelina or any part of same, in possession for the purpose of barter or sale, or to

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sell or to offer for sale any collared peccary or javelina or any part thereof. As amended Acts 1959, 56th Leg., page 139, ch. 81, § 1.

Emergency. Effective April 17, 1959.

Section 3 of the amendatory Act of 1959 repealed all conflicting laws and parts of laws to the extent of the conflict.

#### Art. 879g—4. Penalty

Any person violating any of the provisions of this Act<sup>1</sup> shall be guilty of a misdemeanor and upon conviction shall be fined in a sum of not less than Ten Dollars (\$10) nor more than Fifty Dollars (\$50); and each collared peccary or javelina, or any part of same, in possession for the purpose of barter or sale, or to sell or to offer for sale, or sold, in violation of this Act shall constitute a separate offense. Added by Acts 1959, 56th Leg., p. 139, ch. 81, § 2.

<sup>1</sup> This article and art. 879g—2a.

Emergency. Effective April 17, 1959.

#### Art. 879h—1. Archery season on buck deer, bear, turkey and collared peccary or javelina

There shall be an open archery season, or period of time, when it shall be lawful to hunt, take and kill solely with bows and arrows, wild buck deer, wild bear, wild turkey gobblers and collared peccary or javelina in both the North and South Zones, October 1 to October 31 of each year both days inclusive. Added Acts 1959, 56th Leg., p. 423, ch. 189, § 1.

Effective 90 days after May 12, 1959, date of adjournment.

Section 2 of the Act of 1959 repeals all conflicting laws and parts of laws.

Acts 1959, 56th Leg., p. 423, ch. 189, sections 2A to 2C as amended by Acts 1959, 56th Leg., 2nd C.S., p. 146, ch. 30, § 1, read as follows:

"Sec. 2A. The provisions of this Act shall not be applicable in whole or in part to the following counties: Anderson, Angelina, Armstrong, Atascosa, Austin, Bailey, Bandera, Baylor, Bee, Bell, Blanco, Borden, Bosque, Bowie, Brazoria, Brewster, Burnet, Caldwell, Calhoun, Callahan, Camp, Carson, Cass, Castro, Cherokee, Colorado, Comanche, Comal, Coryell, Cottle, Crockett, Crosby, Dallam, Dallas, Deaf Smith, Delta, De Witt, Dickens, Eastland, Ector, Edwards, Ellis, Erath, Fannin, Fayette, Fisher, Foard, Fort Bend, Franklin, Frio, Galveston, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gregg, Grimes, Guadalupe, Hamilton, Hansford, Hardeman, Hardin, Harrison, Hartley, Haskell, Hays, Hemphill, Henderson, Hill, Hood, Hopkins, Houston, Howard, Hutchinson, Irion, Jackson, Jasper, Johnson, Jones, Karnes, Kaufman, Kendall, Kent, Kerr, Kleberg, Kimble, King,

Kinney, Knox, Lamar, Lamb, Lampasas, La Salle, Lavaca, Leon, Lipscomb, Live Oak, Llano, McCulloch, McMullen, Marion, Martin, Mason, Matagorda, Maverick, Menard, Mitchell, Montgomery, Moore, Morris, Nacogdoches, Newton, Nolan, Nueces, Ochiltree, Oldham, Panola, Parmer, Polk, Rains, Reagan, Real, Red River, Roberts, Rockwall, Rusk, Sabine, San Augustine, San Jacinto, San Saba, Schleicher, Scurry, Shackelford, Shelby, Sherman, Smith, Somervell, Sterling, Stonewall, Sutton, Taylor, Terrell, Throckmorton, Titus, Tom Green, Trinity, Tyler, Upshur, Val Verde, Van Zandt, Victoria, Walker, Waller, Washington, Wharton, Wilbarger, Wilson, Wood.

"Sec. 2B. The following counties, whether in the North or South Zones, are excluded from the operation of this Act: Bee, Bexar, Brewster, Briscoe, Childress, Collingsworth, Colorado, Donley, Floyd, Hale, Hall, Karnes, Kenedy, Knox, Maverick, Motley, Swisher, Terrell, Val Verde, and Wilson. As amended Acts 1959, 56th Leg., 2nd C.S., p. 146, ch. 30, § 1.

"Sec. 2C. Provided, further, that hunting in Jack, Wise and Parker counties shall be done only by residents of those counties."

#### Art. 879h—2. Possessing firearm or crossbow while hunting during archery season

It shall be unlawful to hunt, take or kill wild buck deer, wild bear, wild turkey gobblers and collared peccary or javelina from October 1 to October 31 of each year while having any type of firearm or crossbow on

the person and at the same time have in his or her possession bow and arrow in an automobile or in a hunting camp or otherwise having any type of firearm or any type of crossbow in possession.

Any person violating any provision of this law shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than Fifty Dollars (\$50) nor more than Two Hundred Dollars (\$200). Added Acts 1959, 56th Leg., p. 423, ch. 189, § 1.

**Art. 879h—3. Bows and arrows; specifications; use; violations; penalties**

It shall be unlawful at any time to hunt, take or kill with bows and arrows wild buck deer, wild bear, wild turkey gobblers and collared peccary or javelina under each of these circumstances: using a bow that is not capable of shooting a hunting arrow equipped with a broadhead hunting point for a distance of one hundred and thirty (130) yards; using arrows that are not equipped with broadhead hunting points at least seven-eighths inches ( $\frac{7}{8}$ " ) in width and not over one and one half inches ( $1\frac{1}{2}$ " ) in width; using arrows that do not have on them in some non-water-soluble media the name and address of the user; using either poisoned, drugged or explosive arrows.

Any person violating any provision of this law shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than Ten Dollars (\$10) nor more than One Hundred Dollars (\$100). Added Acts 1959, 56th Leg., p. 423, ch. 189, § 1.

**Art. 879h—4. Deer, definition**

Deer shall be defined in this Act as a buck with three points or more. Added Acts 1959, 56th Leg., p. 423, ch. 189, § 1.

**Art. 879h—5. Length of archery season**

In counties where the hunting season on wild buck deer, wild bear, wild turkey gobblers and collared peccary or javelina is less than thirty-one (31) days, the Game and Fish Commission shall determine the length of the season to hunt wild buck deer, wild bear, wild turkey gobblers and collared peccary or javelina with bows and arrows not to exceed the firearms hunting season and shall fix the number of days of the hunting season with bows and arrows. The Game and Fish Commission shall also set the opening and closing days of such season. Added Acts 1959, 56th Leg., p. 423, ch. 189, § 1.

**Art. 880c. Morris County; hunting with dogs**

It shall be unlawful for any person to make use of a dog or dogs in the hunting of or pursuing or taking of any deer in Morris County. Any person owning or controlling any dog who permits or allows such dog to run, trail, or pursue any deer at any time shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum of not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200). Acts 1959, 56th Leg., p. 124, ch. 71, § 1.

Emergency. Effective April 8, 1959.

**Title of Act:**

An Act making it unlawful to hunt deer with dogs in Morris County; providing penalties; and declaring an emergency. Acts 1959, 56th Leg., p. 124, ch. 71.

**Art. 908. Hunting on game preserves for pay****Licenses; applications of owners of shooting resorts; accommodation of members prior to receipt**

(a) It is hereby declared unlawful for any person or persons, who may be acting as manager of any club, or the owner of any club, or shooting resort or shooting preserve, or lessor of premises leased for hunting purposes, to receive or accommodate as guest or member of such club, or shooting resort, or shooting preserve, or lessee of premises leased for hunting purposes, for pay, any person or persons engaged in hunting, before such manager of such club, shooting resort, shooting preserve, or premises leased for hunting purposes, shall have applied for and received a license from the Game and Fish Commission, or one of its authorized agents, granting him the right for the year beginning September 1st and ending August 31st, following, to receive and accommodate any such person or persons at such club, shooting resort, shooting preserve, or premises leased for hunting purposes.

**Shooting preserve, definition**

(b) A "shooting preserve" is defined as any premises leased for hunting purposes which is a separate, unconnected, and distinct tract of land with a continuous and unbroken boundary.

**Shooting resort, definition**

(c) A "shooting resort" shall be defined as an area of not less than six hundred (600) acres nor more than two thousand (2000) acres, that are contiguous to each other on which pen-raised fowls and/or imported game birds, banded and marked in accordance with the provisions of this Act, are released to provide hunting for members or guests authorized by the hunting laws of this state. As amended Acts 1959, 56th Leg., 2nd C.S., p. 124, ch. 24, § 1.

Effective 90 days after July 16, 1959, date of adjournment. Acts 1959, 56th Leg., 2nd C.S., p. 124, ch. 24, § 1 inserted the following: " \* \* \* nor more than two thousand (2000) acres, \* \* \* " relative to the size of shooting resorts.

**Marking boundaries of shooting resorts**

(d) A "shooting resort" shall be distinguished from any other club, shooting preserve, or leased premises for hunting purposes, by clearly marking the boundaries of said shooting resort with markers of a metal construction being at least eighteen (18) inches by twenty-four (24) inches in size and bearing the words "Shooting Resort Licensed by the Game and Fish Commission of Texas." "Hunting by permit Only." The lettering on said markers to be of such size and proportions as will permit reading under ordinary conditions at two hundred (200) feet. These markers shall be placed around the perimeter of a shooting resort at a distance of not to exceed one thousand (1000) feet from each other marker and in addition shall be placed at all entrances. As amended Acts 1959, 56th Leg., 2nd C.S., p. 124, ch. 24, § 2.

Effective 90 days after July 16, 1959, date of adjournment. 24, § 2 substituted "one thousand (1000) feet" for "four hundred (400) feet" and

Relative to the location of markers around the perimeter of a shooting resort, Acts 1959, 56th Leg., 2nd C.S., p. 124, ch. 24, § 2 substituted "one thousand (1000) feet" for "four hundred (400) feet" and added the provision requiring the markers to be placed at all entrances.

**Annual release of quail or pheasants; restocking resort with game**

(e) Anyone operating a "shooting resort" shall be required to release a minimum of five hundred (500) quail annually or a minimum of five hundred (500) pheasant or chukar annually on each six hundred (600) acres of land licensed as a shooting resort. Any individual operating a shooting resort shall within thirty (30) days of the close of the game season as hereinafter outlined release at least five percent (5%) of the total number of killed birds from said area for the purpose of restocking same with game. As amended Acts 1959, 56th Leg., 2nd C.S., p. 124, ch. 24, § 3.

Effective 90 days after July 16, 1959, date of adjournment.

Acts 1959, 56th Leg., 2nd C.S., p. 124, ch. 24, § 3 omitted the following provision: "Each of said game birds so released shall

be banded with a band carrying the permit number of the owner of said shooting resort and the band shall remain on the bird after it is killed and processed."

**Issuance of licenses for preserves and resorts**

(f) There shall be issued one (1) license for each shooting preserve and/or shooting resort in the manner prescribed in this Act.

**Fees; affidavits of licensees; non-resident licenses; purchase**

(g) Before such license is issued the person applying for a shooting preserve license shall pay to the Game and Fish Commission the sum of Five Dollars (\$5.00). If the license applied for is a shooting resort license, the person shall pay to the Game and Fish Commission the sum of Ten Dollars (\$10.00). In each event the licensee shall file with the Game and Fish Commission the name of said club, shooting preserve or shooting resort and shall file with the Game and Fish Commission an affidavit that he will not violate any of the provisions of this Article and will endeavor to prevent guests of said club, shooting preserve, shooting resort or premises leased for hunting purposes from doing so and that no guests will be accommodated who have not previously secured a hunting license. A non-resident license, for use only on state-licensed shooting resorts during the shooting resort season from October 1st to April 1st, may be purchased for the sum of Three Dollars and Fifteen Cents (\$3.15), and will be considered a valid license for out-of-state guests.

**Bands; contents; retention on birds after killing and processing**

(h) All game birds that are killed on said areas as above described shall be banded with a band carrying the permit number of the owner of said shooting resort and the band shall remain on the bird after it is killed and processed. As amended Acts 1959, 56th Leg., 2nd C.S., p. 124, ch. 24, § 4.

Effective 90 days after July 16, 1959, date of adjournment.

Prior to amendment by Acts 1959, 56th Leg., 2nd C.S., p. 124, ch. 24, § 4, subsection (h) provided: "All game birds that are released on said areas as above de-

scribed shall be banded and in regard to quail, in addition to being banded, they shall also be marked by bleaching at least two (2) inches of the tip of the right wing."

**Season for resorts with pen-raised fowl or imported game birds**

(i) On said "shooting resort" or "hunting areas" that have been stocked by the owners with game birds such as quail, chukar and pheasant, or any other pen-raised fowls and/or imported game birds, season on

such birds in such areas shall be October 1st to April 1st of each year. As amended Acts 1959, 56th Leg., 2nd C.S., p. 124, ch. 24, § 5.

Effective 90 days after July 16, 1959, date of adjournment.

Quail "marked with a bleached wing" were deleted from this subsection by Acts 1959, 56th Leg., 2nd C.S. p. 124, ch. 24, § 5.

**Record book for registration of guests; contents**

(j) All managers of clubs, shooting resorts, shooting preserves and premises leased for hunting shall be required to keep a suitable record book, and each guest or member shall be required to register, showing his name and place of residence, license number, and a record of each day's kill of different birds and game, and a complete record must be made to the Game and Fish Commission by such manager of such club, shooting resort, shooting preserve, or premises leased for hunting purposes not later than May 1st of each year.

**Failure to comply with section; cancellation of license; renewals**

(k) Whenever any manager of any club, shooting resort, shooting preserve, or premises leased for hunting purposes, fails or refuses to comply with any of the provisions of this Section, the Game and Fish Commission or its authorized agent is authorized and empowered to cancel his license without refund or return of the license fee, and no license shall be renewed or issued to such party, or parties, thereafter for a period of one (1) year.

**Failure to secure license; penalties; special game fund**

(l) Any manager of any club, shooting resort, shooting preserve, or premises leased for hunting purposes, who accommodates hunters for reward, without first having secured the necessary license as provided in this Section, or who shall fail to comply with any of the provisions of this Act or shall violate any provisions of this Act, shall be deemed guilty of a misdemeanor and upon conviction shall be fined the sum of not less than Twenty-five Dollars (\$25.00) nor more than Two Hundred Dollars (\$200.00), or by imprisonment in the county jail for not more than ninety (90) days, or by both such fine and imprisonment. Such fines shall be placed to the credit of the special game fund.

**Blank licenses; preparation; distribution; contents; collection of fees**

(m) For the purpose of carrying out the provisions of this Section it shall be the duty of the Game and Fish Commission or its authorized agent to have prepared and to furnish all persons authorized by law to issue hunting and fishing licenses, blank licenses with stubs attached, numbered serially, such licenses to be clearly marked "shooting preserve license"—"shooting resort license." It shall be the duty of the Game and Fish Commission or its authorized agent issuing said license to indicate the type of license issued and to collect the fee provided in this Act; such shooting license shall have printed across the face the year for which it is issued, shall bear the name and address of the licensee, name of the club, shooting preserve or shooting resort, character of game found on such area and the expiration date of such license; said license must bear the seal of the Game and Fish Commission and must be signed by one of its authorized agents. On the reverse side of said license shall be printed the open seasons and bag limits as provided in this Chapter. As amended Acts 1953, 53rd Leg., p. 854, ch. 346, § 1; Acts 1955, 54th Leg.,



p. 1154, ch. 438, § 1; Acts 1959, 56th Leg., p. 28, ch. 18, § 1; Acts 1959, 56th Leg., 2nd C.S., p. 124, ch. 24, §§ 1-5.

Emergency. Amendment by Acts 1959, 56th Leg., p. 28, ch. 18, § 1, effective March 6, 1959. Amendment by Acts 1959, 56th Leg., 2nd C.S., p. 124, ch. 24, §§ 1-5, effective 90 days after July 16, 1959, date of adjournment.

### Art. 923m. Fur-bearing animals

#### Definition

Section 1. All fur-bearing animals of this State are hereby declared to be the property of the people of this State. For the purposes of this Act, wild beaver, wild otter, wild mink, wild ring-tail cat, wild badger, wild polecat or skunk, wild raccoon, wild muskrat, wild o'possum, wild fox, wild civet and coypu are hereby declared to be fur-bearing animals. As amended Acts 1957, 55th Leg., p. 839, ch. 367, § 1.

#### Open season

Sec. 2. It shall be unlawful for any person to take or attempt to take the pelt of any fur-bearing animal of this State at any time other than the open season provided therefor. The open season for taking pelts of fur-bearing animals shall be during the months of December and January of each year, except muskrats, the open season for which shall be from the 15th day of November to the 15th day of March, both days inclusive, and except mink, the open season for which shall be November 15th to January 15th, both days inclusive. A person may hunt, take or kill a fur-bearing animal, as defined in this Act, for purposes other than taking its pelt for sale during any month of the year.

#### Possession of pelts in closed season

Sec. 3. The possession of green or undried pelts of fur-bearing animals after January 31st of any year shall be prima-facie evidence of a violation of this Act.

#### Mink; hunting with dogs; exception

Sec. 4. No person shall hunt, take or kill or attempt to hunt, attempt to take, or attempt to kill wild mink in the State of Texas with dogs, and no person shall have in his possession a mink pelt while hunting with dogs. This section shall not apply, however, to the Counties of Hopkins, Delta, Franklin, Camp and Rains. As amended Acts 1959, 56th Leg., p. 565, ch. 256, § 1.

Emergency. Effective May 26, 1959.

#### Penalty

Sec. 5. A person who violates this Act shall be fined not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200). Acts 1957, 55th Leg., p. 839, ch. 367.

Emergency. Effective May 31, 1957.

### Art. 923m—1. Incorporated in art. 923m

Former Article 923m—1 consisted of Acts 1957, 55th Leg., p. 839, ch. 367, §§ 2 to 5.

**Art. 934a. Commercial fisherman and wholesale dealer's license**

License fees; sizes of fish which may be sold

## Sec. 3.

5(a, b). Repealed. Acts 1959, 56th Leg., p. 407, ch. 187, § 15(a). Eff. May 20, 1959.

**Art. 934c. Menhaden fishing in salt waters of Gulf of Mexico**

Area within which fishing permitted; season; nets and seines

Sec. 5. Menhaden fish may be taken from the waters of the Gulf of Mexico within the gulfward boundary lines of Jackson, Calhoun, Refugio, Aransas, San Patricio, Kleberg, Kenedy, Willacy, Jefferson, and Cameron Counties from the coast line of the Gulf of Mexico to the continental shelf compiled, platted, fixed and located by the Commissioner of the General Land Office pursuant to Senate Bill No. 338, Chapter 287, Acts of the Fiftieth Legislature, 1947,<sup>1</sup> and filed and recorded in the office of the County Clerk of Jackson, Calhoun, Refugio, Aransas, San Patricio, Kleberg, Kenedy, Willacy, Jefferson, or Cameron Counties, between April 1st and December 1st of each year through the use of nets and purse seines which, not including the bag, shall be not less than one and one half (1½) inch stretched mesh; provided, however, that no such nets and purse seines may be used in any bay, river, pass or tributary thereto, nor within one mile of any barrier, jetty, island, or pass, nor within one half (½) mile offshore in the Gulf of Mexico; provided, further, that no such net shall be used in the taking of menhaden fish until it shall have been examined and tagged in accordance with the provisions of Article 946 of the Penal Code of Texas. As amended Acts 1959, 56th Leg., p. 561, ch. 252, § 1.

<sup>1</sup> Article 1592a.

Emergency. Effective May 26, 1959.

**Art. 941—2. Using nets for fish and shrimp in Matagorda Bay and Gulf of Mexico**

Section 1. It shall be unlawful for any person to place, set, use or drag any seine, net or other device for catching fish and shrimp other than the ordinary pole and line, casting rod and reel, artificial bait, trot-line, set line, or cast net or minnow seine of not more than twenty feet in length for catching bait, or spear or gig and light for taking flounder, in or on any of the waters of Pass Caballo leading from Matagorda Bay to the Gulf of Mexico which waters lie within the following points:

Beginning at a point on the southeast bank at the mouth of Saluria Bayou; thence in a northeasterly direction to a point on the Matagorda Bay shore of Matagorda Peninsula 4,000 yards southwest from a point on said shore which marks the boundary line between the Elijah Decrow survey and the John Allen survey on said Peninsula; thence across the Peninsula to a point on the Gulf of Mexico shore thereof 3,000 yards southwest from a point on the Gulf of Mexico shore which marks the boundary line between the Elijah Decrow survey and the John Allen survey; thence to a point in the Gulf of Mexico 300 yards directly offshore; thence to a point in the Gulf of Mexico 300 yards directly offshore from a point on Matagorda Island shore which is 300 yards southwest along the shore from the "Point of Rocks"; the line connecting these latter two points offshore in the Gulf of Mexico from Matagorda Peninsula to Matagorda Island curving so that it shall never be closer to Matagorda Peninsula and Matagorda Island than 300 yards;

thence to the point on Matagorda Island shore which is 300 yards southwest from the "Point of Rocks"; thence up the shore line of Matagorda Island to the point of beginning.

The Texas Game and Fish Commission shall erect a suitable marker at each of the above described points on land. As amended Acts 1959, 56th Leg., 2nd C.S., p. 85, ch. 3, § 1.

Emergency. Effective July 13, 1959.

Acts 1959, 56th Leg., 2nd C.S., p. 85, ch. 3, § 1 substituted "the Elijah Decrow survey and the John Allen survey" for "the Elizabeth Green survey and the H. L.

Cook survey" throughout this subsection. This amendment also added the following description: "thence to the point on Matagorda Island shore which is 300 yards southwest from the 'Point of Rocks';".

Sec. 2. The purpose of this Act is to define with certainty the waters of Pass Caballo leading from Matagorda Bay to the Gulf of Mexico in which it is unlawful to use certain nets and other devices for catching fish and shrimp and in furtherance of such purpose this Act shall be construed as cumulative to existing law.

Sec. 3. Any person who shall violate any of the provisions of this Act shall be deemed guilty of a misdemeanor, and on first conviction shall be fined in a sum of not less than Twenty-five Dollars (\$25.00) nor more than One Hundred Dollars (\$100.00); and on second or more convictions shall be fined in a sum of not less than One Hundred Dollars (\$100.00) nor more than Two Hundred Dollars (\$200.00). Acts 1959, 56th Leg., p. 538, ch. 240.

Emergency. Effective May 26, 1959.

Fish pound nets in Gulf of Mexico, see art. 954.

Net for shrimp, see art. 950.

Regulating taking of,

Fish and shrimp in tidal waters, see art. 952l—10.

Shrimp, see art. 952l—4.

Shrimp, see art. 952l—4.

952l—11.

Texas Shrimp Conservation Act, see Vernon's Ann.Civ.St. art. 4075b.

Title of Act:

An Act relating to the unlawful use of certain nets and other devices for catching fish and shrimp in certain defined waters of Matagorda Bay and the Gulf of Mexico; providing penalties for violations; providing that the Act shall be cumulative; and declaring an emergency. Acts 1959, 56th Leg., p. 538, ch. 240.

### Art. 950. Net for shrimp

Texas Shrimp Conservation Act, see Vernon's Ann.Civ.St. art. 4075b.

Using nets for fish and shrimp in Matagorda Bay and Gulf of Mexico, see art. 941—2.

### Art. 952aa—4. Fishing in Murvaul Lake in Panola County; violations; penalties

#### Opening of season

Section 1. It shall be unlawful for any person to fish or to attempt to take or catch fish from the waters of Murvaul Lake in Panola County, Texas, before 12:01 a. m. on May 30, 1959.

#### Camping on lake shore

Sec. 2. It shall be unlawful for any person or group of persons to camp on the shores of Murvaul Lake in Panola County, Texas, on any land owned by the Panola County Fresh Water Supply District No. 1, except at such point or places as may be designated as a camp site by the Board of Supervisors of the Panola County Fresh Water Supply District No. 1.

#### Swimming, wading, bathing or water skiing

Sec. 3. It shall be unlawful for any person to swim or to bathe or to wade or to water ski in or on the waters of Murvaul Lake in Panola Coun-

ty, Texas, except at the respective points designated and within the respective areas designated for swimming, bathing, wading, or engaging in water skiing by the Board of Supervisors of Panola County Fresh Water Supply District No. 1.

**Use of net or seine; permits**

Sec. 4. It shall be unlawful for any person to use a net or seine to take fish or to attempt to take fish from the waters of Murvaul Lake in Panola County, Texas, without first securing a permit therefor from the Board of Supervisors of the Panola County Fresh Water Supply District No. 1 as hereinafter provided. This Section shall not prohibit nor make it unlawful for any fisherman to use a hand net to assist in the taking of any fish which such fisherman has theretofore hooked on a trotline or while fishing by hand.

**Fishing from dam or near spillway**

Sec. 5. It shall be unlawful for any person to fish or to attempt to take or catch fish from the waters of Murvaul Lake in Panola County, Texas, while fishing from the Dam or the Spillway Outlet or within a radius of three hundred (300) feet of the Spillway of Murvaul Lake.

**Use of trotlines**

Sec. 6. It shall be unlawful to take or to attempt to take or catch any fish by the use of a trotline of any sort or description placed in the waters of Lake Murvaul in Panola County, Texas, except a trotline or trotlines of the maximum length or less and with the maximum number of hooks or less attached thereto as prescribed by the Board of Supervisors of the Panola County Fresh Water Supply District No. 1 and placed in such areas as are designated by the Board of Supervisors of Panola County Fresh Water Supply District No. 1 for permissive fishing by the use of trotlines.

**Possession of rifles or pistols; applicability to peace officers or wardens**

Sec. 7. It shall be unlawful for any person to possess for the purpose of shooting, any rifle or pistol of any kind or character on or over the waters of Murvaul Lake in Panola County, Texas, and the possession by any person of a rifle or pistol of any kind or character within a distance of five hundred (500) feet from the waters of Murvaul Lake in Panola County, Texas, shall be prima-facie evidence of a violation of this Section, provided, however, that this Section shall not apply to any peace officers in the State of Texas or to any game warden or deputy warden of the State of Texas, or to any regular employee of the Panola County Fresh Water Supply District No. 1.

**Designation as wildlife sanctuary; hunting; possession of firearms**

Sec. 8. The waters of Murvaul Lake west of Farm-to-Market Road No. 1971 are hereby designated as a wildlife sanctuary, and it shall be unlawful for any person to hunt duck or geese or any other specie of wildlife on the waters of Murvaul Lake in Panola County, Texas, lying west of such Farm-to-Market Road No. 1971; and the possession of any type of gun or firearm on the waters of Murvaul Lake lying west of Farm-to-Market Road No. 1971 or within a distance of two hundred (200) feet of the waters of Murvaul Lake lying west of such Farm-to-Market Road No. 1971 shall be prima-facie evidence of a violation of this Section.

**Traps**

Sec. 9. It shall be unlawful for any person to use any kind or character of trap to take or to attempt to catch or take any fish from the waters of Murvaul Lake in Panola County, Texas.

**Commercial fishing permit**

Sec. 10. There is hereby created a permit to be known as Lake Murvaul Commercial Fishing Permit, and it shall be unlawful for any person to engage in Commercial fishing or to take or attempt to take any fish from the waters of Murvaul Lake in Panola County, Texas, for sale, barter, or trade without having first obtained a permit so to do from the Board of Supervisors of the Panola County Fresh Water Supply District No. 1, and such permit holder shall then only take or attempt to take for such purposes such specie or species of fish as are authorized under such Permit.

**Bait**

Sec. 11. It shall be unlawful for any person to use for bait while fishing in the waters of Murvaul Lake in Panola County, Texas, any Goldfish, or any other kind or character of bait belonging to the Carp species.

**Violations; penalties**

Sec. 12. Any person violating any Section or any provision of any Section of this Act shall upon conviction be fined in a sum of not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200) and costs, and all net amounts of fines so collected shall be remitted monthly to the Game, Fish and Oyster Commission of the State of Texas, and shall be deposited in the special Game and Fish Fund and may be used for all of the purposes provided for by law for the use of said Fund.

The violation of any Section or any provision of any Section of this Act shall constitute a separate offense and shall be punishable as such. Acts 1959, 56th Leg., p. 91, ch. 46:

Section 13 of the Act of 1959 provided: "All laws and parts of laws which conflict with any Section of this Act are hereby repealed in so far as such laws or parts of

laws pertain to Murvaul Lake in Panola County, Texas."

Emergency. Effective April 1, 1959.

**Arts. 952l—4, 952l—10**

Texas Shrimp Conservation Act, see Vernon's Ann.Civ.St. art. 4075b.

Using nets for fish and shrimp in Matagorda Bay and Gulf of Mexico, see art. 941—2.

**Art. 952l—11. Shrimp; classification of fish; taking nongame fish**

**Closed season; shrimp trawl; means of taking; possession  
Repealed in Part**

Sec. 1, pars. 3, 5. Repealed. Acts 1959, 56th Leg., p. 407, ch. 187, § 15(c). Eff. May 20, 1959.

Section 15(c) of the Act of 1959 provided that the provisions of Section 1 of Chapter 322, Forty-seventh Legislature of Texas, Regular Session, 1941, as amended by Chapter 87, Fiftieth Legislature of Texas, Regular Session, 1947, making it unlawful to use or operate a shrimp trawl

in the Gulf of Mexico within the territorial limits of Texas between thirty (30) minutes after sunset and thirty (30) minutes before sunrise (carried as the third paragraph of Section 1 of Article 952l—11 of Vernon's Penal Code of Texas), and those provisions of said Acts making it unlawful

## 825 OFFENSES AGAINST PUBLIC PROPERTY Art. 978f—6

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

for any person aboard any commercial fishing vessel to head shrimp aboard said boat or to dump or deposit any shrimp heads at or near any place or area where shrimp are ordinarily taken (carried as the fifth paragraph of Section 1 of Article 952-1—11 of *Vernon's Penal Code of Texas*), and any and all other laws of the State of Texas making it unlawful to operate a shrimp trawl, or to catch shrimp, at night

in the coastal waters of Texas or to head shrimp aboard a shrimp boat or other vessel or to deposit said shrimp heads in the outside waters of Texas, are hereby expressly repealed.

Texas Shrimp Conservation Act, see *Vernon's Ann.Civ.St.* art. 4075b.

Using nets for fish and shrimp in Matagorda Bay and Gulf of Mexico, see art. 941—2.

### Art. 954. Fish found in gulf waters

Using nets for fish and shrimp in Matagorda Bay and Gulf of Mexico, see art. 941—2.

### Art. 978f—6. Reciprocal agreements; fishing and hunting on waters located upon common boundaries with other states

#### Power and authority of commission to negotiate; reciprocal application

Section 1. The Game and Fish Commission is hereby directed, authorized, and empowered to negotiate through its executive secretary with the authorized agents, commissions or boards of states having a common border with the State of Texas to provide for fishing and hunting migratory water fowl on lakes and rivers located upon a common boundary between Texas and such other states by sportsmen or sport and commercial fishermen who hold a fishing or hunting license issued by either state. Any agreement negotiated or entered into shall have reciprocal application upon fishermen and hunters licensed by said other states and shall apply to the waters of said lake or river located on boundary waters.

#### Nonresidents; fishing and hunting licenses; exemptions; purpose of section

Sec. 2. Any nonresident who is at least seventeen (17) years of age and who is not over sixty-five (65) years of age who has in his immediate possession a valid fishing license or a valid hunting license issued to him by his home state shall not be required to secure a fishing license or a hunting license as provided for under the laws of this State, provided the state of his residence likewise recognizes such license issued by the State of Texas and exempts the holders thereof from securing such license from such foreign state. The purpose of this Section is to extend full reciprocity to citizens of other states comprising the United States of America which extend like privileges to citizens of the State of Texas. Such nonresidents who qualify under this Act shall be subject to all of the laws of the State of Texas relating to the taking of the wildlife resources.

#### Proclamations approving agreements

Sec. 3. The Game and Fish Commission is hereby authorized and empowered to issue proclamations approving any agreements negotiated by its executive secretary under provisions pursuant to the Act. Said proclamation shall become effective thirty (30) days after the agreement has been lawfully accepted by the bordering state and said proclamation is issued by the Commission.

#### Rules and regulations; meetings of commission; quorum

Sec. 4. The Game and Fish Commission is hereby authorized and empowered to issue, from time to time, rules and regulations in accordance

with agreements with bordering states made pursuant to this Act for the conservation of fish and wildlife of this State or to carry out the provisions of agreements with bordering states made pursuant to this Act. Such rules and regulations shall be adopted by the quorum of said Commission, and only at any regular or special Commission meeting or meetings, of the date and time of which each Commissioner shall have been notified in writing by the executive secretary of said Commission (or his assistant in his absence), and such meetings for such purpose shall be held only in said Commission's office at Austin, Texas. Any person interested shall be entitled to be heard at such meetings; provided that six (6) members, or the Chairman and five (5) members of said Commission shall constitute a quorum; and provided further, that no rule, or regulation, shall be adopted at any regular or special meeting of the Commission unless and until a quorum is present.

#### Effective dates and duration of proclamations, rules and regulations

Sec. 5. Proclamations, rules and regulations adopted by said Commission or issued by its executive secretary (or the assistant executive secretary in his absence), when authorized to do so by the Commission, shall become effective thirty (30) days after their adoption, and shall continue in full force and effect until they shall expire by their own terms or are revoked or amended by said Commission.

#### Filing copies

Sec. 6. Immediately after its adoption, a copy of each rule or regulation adopted by said Commission shall be numbered and filed in its office in Austin, Texas, and a copy thereof shall be filed in the office of the Secretary of State, the office of each County Clerk and each County Attorney in the counties within which the rivers or lakes involved are located, the Secretary of State of all states which are a party to agreements covering said lakes and rivers, the Game and Fish Commission or the equivalent board, commission or agent of each state which is a party to an agreement involving said lakes and rivers, and a mimeographed copy shall be furnished to each employee of said Commission who performs duties in said counties in which the lakes or rivers are located.

#### Revocation and disaffirmance of agreements

Sec. 7. The Game and Fish Commission is hereby authorized and empowered to revoke and disaffirm any agreement made pursuant to this Act ninety (90) days after giving notice to the bordering states which are parties to any agreement so revoked and disaffirmed.

#### Violations; penalties

Sec. 8. Any person violating any proclamation, rule or regulation of the Game and Fish Commission issued pursuant to this Act shall be guilty of a misdemeanor and upon conviction shall be fined any sum not less than Ten Dollars (\$10) nor more than Two Hundred Dollars (\$200). Each fresh-water fish or migratory water fowl taken or possessed in violation of any proclamation, rule or regulation issued by the Commission shall constitute a separate offense. Acts 1959, 56th Leg., 2nd C.S., p. 106, ch. 17.

Emergency. Effective July 21, 1959.

#### Art. 978j. Local game and fish laws

For fish and game law applicable only to the named counties, see notes under Vernon's Ann.Pen.Code, art. 978j.

**Art. 978-2. Open season for and possession of game mammals, game birds and fur-bearing animals in portion of state west of Pecos River; violations**

Secs. 16, 17. Repealed. Acts 1959, 56th Leg., p. 196, ch. 109, § 2.

Emergency. Effective April 28, 1959. Time for taking antelope or wild elk, Section 2 of the amendatory Act of 1959 rules and regulations, see section 19 of also repealed all conflicting laws and parts this article. of laws.

**Permits to hunt antelope or wild elk; rules and regulations**

Sec. 19. It shall be unlawful for any person to hunt or attempt to hunt or take any prong-horned antelope or wild elk until he has first obtained a valid permit from the landowner or from the person in charge of such area. Each applicant for a permit shall apply to the landowner or the person in charge of such area, and no person shall receive more than one permit. Each permit shall designate the area on which said permittee shall hunt.

The Game and Fish Commission shall be vested with broad discretion in administering this Act, and to this end shall be authorized to adopt any and all reasonable rules, regulations, or orders which it finds are necessary and proper to effectuate the provisions and purposes of this Act, including the authority to set the period of time in which it shall be lawful to take or kill any prong-horned antelope or wild elk and to determine the number and sex of the species to be taken by any one person and to grant to the landowner the permits to be issued for the number of prong-horned antelope or wild elk that may be taken under sound wildlife management practices from the landowner's area. Also the Commission shall determine the means and methods that shall be lawful for the taking or killing thereof and shall issue its proclamations, rules, regulations, or orders to effect the purpose of this Act. As amended Acts 1959, 56th Leg., p. 196, ch. 109, § 1.

**Art. 978n-1. Game law for counties in 29th and 31st Senatorial Districts**

**Legislative policy**

Section 1. This Act shall apply only to Dallam, Sherman, Hansford, Ochiltree, Lipscomb, Hartley, Moore, Hutchinson, Roberts, Hemphill, Oldham, Potter, Carson, Gray, Wheeler, Deaf Smith, Randall, Armstrong, Donley, Collingsworth, Parmer, Castro, Swisher, Briscoe, Hall, Childress, Cottle, Motley, Hale, Floyd, Bailey, and Lamb Counties. It shall be unlawful, except as provided in this Act, for any person to hunt, take, kill or possess, or attempt to hunt, take, or kill any game bird, or game animal in said counties at any time; or to take, kill, trap or possess, or attempt to take, kill, or trap any fur-bearing animal in said counties at any time; or to take or attempt to take any fresh water fish by any means or method in said counties at any time. In order to better conserve an ample supply of the wildlife resources in said counties, to the end that the most reasonable and equitable privileges may be enjoyed by the people of said counties and their posterity in their ownership and in the taking of such resources, it is deemed for the public welfare that this Legislature should provide a law adaptable to changing conditions and emergencies which threaten depletion or waste of the wildlife resources in said counties. The Game and Fish Commission is therefore granted the authority, power and duty to provide, by proclamation, rule or regulation, from time to time, periods of time when it shall be lawful to take a portion of the wild-



life resources of said counties, when its investigation and findings of fact disclose there is an ample supply of such wildlife resources, that a portion thereof may be taken which will not threaten depletion or waste of such supply. It shall also, by proclamation, rule or regulation, from time to time, provide the means and the method and the place and the manner in which such wildlife resources may be lawfully taken; provided, however, that it shall be unlawful for any person to hunt, take, kill or possess, or attempt to hunt, take or kill any game bird or game animal in said counties at any time; or to take or attempt to take any fresh water fish by any means or method in said counties at any time; unless the owner of the land or the water, or his duly authorized agent shall give consent thereto. As amended Acts 1959, 56th Leg., p. 215, ch. 125, § 1.

Emergency. Effective April 29, 1959.

#### Antelope and elk permits

Sec. 7. It shall be unlawful for any person to hunt or attempt to hunt or take any prong-horned antelope or wild elk until he has first obtained a valid permit from the landowner or from the person in charge of such area. Each applicant for a permit shall apply to the landowner or the person in charge of such area, and no person shall receive more than one permit. Each permit shall designate the area on which said permittee shall hunt.

The Game and Fish Commission shall be vested with broad discretion in administering this Act, and to this end shall be authorized to adopt any and all reasonable rules, regulations, or orders which it finds are necessary and proper to effectuate the provisions and purposes of this Act, including the authority to set the period of time in which it shall be lawful to take or kill any prong-horned antelope or wild elk and to determine the number and sex of the species to be taken by any one person and to grant to the landowner the permits to be issued for the number of prong-horned antelope or wild elk that may be taken under sound wildlife management practices from the landowner's area. Also the Commission shall determine the means and methods that shall be lawful for the taking or killing thereof and shall issue its proclamations, rules, regulations, or orders to effect the purpose of this Act. As amended Acts 1959, 56th Leg., p. 189, ch. 107, § 1.

Emergency. Effective April 28, 1959.

Section 2 of the amendatory Act of 1959 repealed all conflicting laws and parts of laws.

## TITLE 14—TRADE AND COMMERCE

## CHAPTER EIGHT—BLUE SKY LAW OF TEXAS

Art. 1111a. Repealed. Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7

See, now, Title 122A, Taxation—General, arts. 4.12 to 4.14.

## CHAPTER ELEVEN—A—STORES AND MERCANTILE ESTABLISHMENTS

Arts.

1111e—1111l. Reserved for future legislation

Art 1111d. Repealed. Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7

Prior to repeal, article 1111d was amended by Acts 1951, 52nd Leg., p. 695, ch. 402, §§ XIV, XVI, §§ 1, 3. See, now, Title 122A, Taxation—General, art. 17.01 et seq. Section 5½, derived from Acts 1950, 51st Leg., 1st C.S., p. 10, ch. 2, Art. XVIII, § 1, provided for an additional license fee.

Arts. 1111e—1111l. Reserved for future legislation

## CHAPTER TWELVE—MISCELLANEOUS OFFENSES

Art.

1137m. Repealed.

1137n. Peddling of printed matter by deaf or mute persons [New].

Art. 1137m. Repealed. Acts 1959, 56th Leg., p. 1066, ch. 487, § 2. Eff. June 1, 1959

Article 1137m was derived from Acts 1955, 54th Leg., p. 1159, ch. 442 and related to peddling by use of cards stating that the person is deaf. See, now, art. 1137n.

Art. 1137n. Peddling of printed matter by deaf or mute persons

It shall be unlawful for any person to peddle or use a finger alphabet card or other printed matter stating in effect that the person is deaf and/or mute, in a manner calculated to play upon the sympathy of another in the solicitation of a contribution or donation. Any person violating any provision hereof shall be deemed guilty of a misdemeanor and upon conviction shall be punished by imprisonment in the county jail for not more than sixty (60) days or by a fine of not less than Ten Dollars (\$10) nor more than Fifty Dollars (\$50), or by both imprisonment and fine. Acts 1959, 56th Leg., p. 1066, ch. 487, § 1.

Emergency. Effective June 1, 1959.

## TITLE 17—OFFENSES AGAINST PROPERTY

## CHAPTER THREE—MALICIOUS MISCHIEF

Art.

1377b. Entering enclosed lands without consent of owner to hunt, fish or camp [New].

Arts. 1333, 1333A

Water Safety Act, see art. 1722a.

Art. 1341. Driving vehicle without owner's consent

a. Whoever wilfully and in absence of the owner drives or operates or causes to be so driven or operated upon any public road or highway any automobile, motorcycle, or other motor vehicle, bicycle, buggy or other horse driven vehicle of a value of less than Two Hundred Dollars (\$200.00) without the consent of the owner thereof, shall be fined not to exceed One Thousand Dollars (\$1,000.00), or be imprisoned in jail not to exceed one (1) year, or by both such fine and such imprisonment.

b. Whoever wilfully and in absence of the owner drives or operates or causes to be so driven or operated upon any public road or highway any automobile, motorcycle, or other motor vehicle, bicycle, buggy or other horse driven vehicle of a value of more than Two Hundred Dollars (\$200.00) without the consent of the owner thereof, shall be fined not to exceed One Thousand Dollars (\$1,000.00), or be imprisoned in jail not to exceed one (1) year, or by both such fine and such imprisonment, or shall be confined in the State Penitentiary for any term not to exceed three (3) years. As amended Acts 1959, 56th Leg., p. 649, ch. 300, § 1.

Effective 90 days after May 12, 1959, date of adjournment.

Section 2 of the amendatory Act of 1959 3 repealed all conflicting laws and parts contained a severability clause and section of laws to the extent of conflict only.

Art. 1370a. Animals running at large on State Highways; enforcement notwithstanding other laws

Section 1. Any person owning or having responsibility for the control of any horse, mule, donkey, cow, bull, steer, hog, sheep, or goat, who knowingly permits such animal to traverse or roam at large, unattended, only on the right-of-way of any U. S. Highway, or State Highway in this state but not including numbered farm-to-market roads, shall be guilty of a misdemeanor, and shall be fined in any sum not exceeding Two Hundred Dollars (\$200.00). Each day that an animal is permitted to roam at large in violation hereof shall constitute a separate offense.

Sec. 2. No civil cause of action for damage shall lie against any person, firm or corporation operating a vehicle on a designated highway in this state by reason of such vehicle's striking, killing, injuring or damaging any unattended animal running at large on a designated highway, except upon a finding of gross negligence in the operation of said vehicle or wilful intent to strike, kill, injure or damage such animal.

Sec. 3. This Act shall not prevent the movement of livestock from one location to another location by herding the livestock on, along or

across the highway, or leading or driving the livestock on, along or across the highway.

Sec. 4. In addition to the penalty provided in Section 1 of this Act, any peace officer may authorize in writing any holder of a permit issued by the Railroad Commission granting authority to haul livestock, to pick up any livestock found unattended upon a designated highway to which this Act applies if the officer, after diligent inquiry, has been unable to locate the owner or persons responsible for the livestock. The livestock so picked up shall be delivered to the sheriff or any constable of the county where found. The sheriff or constable so receiving livestock shall make disposition of the livestock as provided in Title 121, Chapter 6, Revised Civil Statutes of Texas, 1925, which provides for the proper disposition of livestock running at large in certain counties, including, but not limited to, the authorization of impounding fees.

Sec. 5. The State Highway Patrolmen, as well as county and local enforcement officers, shall have the power and authority, and it shall be their duty to enforce all the provisions of this Act. The State Highway Patrolmen, sheriff, constable, or other enforcement officer, is authorized to carry out the enforcement of this Act without the use of a written warrant. Notwithstanding the provisions of Articles 6928 to 6971, inclusive, of the Revised Civil Statutes of 1925, or any amendments thereto, or any other laws heretofore enacted authorizing or permitting livestock to run at large on public roads, and notwithstanding the results of any elections heretofore, or hereafter held in accordance therewith, this Act shall be controlling in all cases wherein it conflicts with the above-mentioned statutes or any action taken thereunder, provided, however, that this Act shall not take effect until July 1, 1960. As amended Acts 1959, 56th Leg., p. 835, ch. 374, § 1.

Section 2 of the amendatory Act of 1959 contained a severability clause.

Effective 90 days after May 12, 1959, date of adjournment.

**Art. 1377. Repealed.** Acts 1959, 56th Leg., 2nd C.S., p. 164, ch. 42, § 6.  
Eff. 90 days after July 16, 1959, date of adjournment

See, now, art. 1377b.

**Art. 1377b. Entering enclosed lands without consent of owner to hunt, fish or camp**

**Necessity of consent; prohibited acts; definition of enclosed lands; proof of ownership or lease**

Section 1. (a) No person shall enter or attempt to enter upon the enclosed land of another without consent of the owner, proprietor, lessee, or person in charge thereof, and hunt or attempt to hunt with firearms, bow and arrow, crossbow, or any other instrument capable of being used in the hunting of any animal or bird.

(b) No person shall enter or attempt to enter upon the enclosed land of another without consent of the owner, proprietor, lessee, or person in charge thereof, and catch or attempt to catch fish from any pond, lake, tank, stream or any body of water therein.

(c) No person shall enter or attempt to enter upon the enclosed land charge thereof, and camp or attempt to camp or in any manner encroach of another without consent of the owner, proprietor, lessee, or person in upon or damage such land.

(d) For the purpose of this Act enclosed land shall mean such lands as are used for agriculture and grazing purposes or for any other pur-

pose, and enclosed by structure for fencing either of wood or iron or combination thereof or wood and wire, or partly by water and stream, canyon, brush, rock or rocks, bluffs or island.

Proof of ownership or lease of such enclosed lands shall be made as in trespass to try title suits.

**Claim of right of user of land surrounded by land of another; necessity of consent; prohibited acts; ingress and egress; route**

Sec. 2. (a) A person who claims the right to use land which is wholly or partially surrounded by land owned by another person shall not enter or attempt to enter upon the surrounding land without the consent of the owner, proprietor, lessee, or person in charge of such surrounding land, and do or attempt to do any of the following acts:

1. Hunt or attempt to hunt with firearms, bow and arrow, crossbow, or any other instrument capable of being used in the hunting of animals or birds.

2. Catch or attempt to catch fish from any pond, lake, tank, stream, or any other body of water therein.

3. Camp or attempt to camp on such land or in any manner deplete upon the same.

(b) 1. A person who claims the right to use land which is either wholly or partially surrounded by land owned by another person shall have the right to enter the surrounding land for purposes of ingress and egress to such land that is wholly or partially surrounded. Such person shall follow for purpose of ingress and egress to such land, a reasonable route designated by the owner, proprietor, lessee or person in charge of the surrounding land. Such person who claims a right to use land wholly or partially surrounded, shall furnish the owner, proprietor, lessee, or person in charge of the surrounding land, with a description of the location and boundaries of the land wholly or partially surrounded, and if requested by the owner, proprietor, lessee or person in charge of the surrounding land, shall go upon the wholly or partially surrounded land and point out the boundaries of such land so as to enable the owner, proprietor, lessee or person in charge of the surrounding land to designate a reasonable route for ingress and egress to such wholly surrounded or partially surrounded land. In the event the owner of the surrounded land shall not have a survey of his claim and should the owner of the surrounding land demand the boundaries of the surrounded land, then the expense of surveying the surrounded land shall be borne and paid by the owner of the surrounding land demanding the same.

2. The owner, proprietor, lessee or person in charge of surrounding land shall designate a reasonable route for purposes of ingress and egress to land wholly or partially surrounded by such surrounding land within thirty (30) days after being notified in writing by the owner or surface lessee of the surrounded lands that such a route is needed, and if such route is not designated in writing within such thirty (30) days the owner or surface lessee of the surrounded lands shall have the right to select the shortest route to the said surrounded lands, having due regard to selecting the route which will least damage such surrounding lands and which will cause the least inconvenience to the owner or surface lessee of the surrounding lands. The owner or surface lessee of such surrounded lands shall notify the owner or surface lessee of the surrounding lands in writing of the route that he proposes to use, and he shall be confined to such route.

**Violations; penalties; prior convictions**

Sec. 3. Any person who violates any provision of Section 1 or Section 2 of this Act, shall be guilty of a misdemeanor, and upon conviction, shall be fined not less than Ten Dollars (\$10) nor more than Fifty Dollars (\$50).

If it be shown on the trial of the case involving the violation of Section 1 or Section 2 of this Act that the defendant has been once before convicted of the same offense, he shall, on his second conviction, be punished by a fine not less than Two Hundred Dollars (\$200) nor more than Five Hundred Dollars (\$500) and by forfeiture of his hunting and/or fishing licenses and the right to hunt and/or fish in the State of Texas for a period of two (2) years from the date of his conviction.

If it be shown upon the trial of a case involving a violation of Section 1 or Section 2 of this Act that the defendant has two (2) times before been convicted of the same offense, he shall, on his third conviction, be punished by confinement in the county jail for not more than thirty (30) days or by fine not less than Five Hundred Dollars (\$500) nor more than One Thousand Dollars (\$1,000) and by forfeiture of his hunting and/or fishing licenses and right to hunt and/or fish in the State of Texas for a period of three (3) years from the date of his conviction.

**Arrest; necessity of warrant**

Sec. 4. Any person found upon the enclosed lands of another in violation of Section 1 hereof, or found upon the surrounding land of another in violation of Section 2 shall be subject to arrest by any peace officer, and such arrest may be made without warrant of arrest.

**Claim of right of user of land surrounding land of another;  
necessity of consent**

Sec. 5. A person who claims the right to use land which wholly or partially surrounds land owned by another person shall not enter or attempt to enter upon the land so surrounded without the consent of the owner, proprietor, lessee or person in charge of such land so surrounded.

**Dispute as to title of land; prosecutions; affidavit of ownership**

Sec. 7. No prosecution can be maintained under this Act if there is a dispute to the title to the land, and if a person charged hereunder shall file an affidavit that he conscientiously believes that he owns the land, or an interest therein. Acts 1959, 56th Leg., 2nd C.S., p. 164, ch. 42.

Effective 90 days after July 16, 1959,  
date of adjournment.

Section 6 of Acts 1959, 56th Leg., 2nd  
C.S. p. 164, ch. 42 repealed art. 1377. Sec-  
tion 8 contained a severability clause.

**CHAPTER EIGHT—THEFT IN GENERAL**

Art.

1436e. Shoplifting [New].

**Art. 1436—1. Motor vehicles; Certificate of Title Act****Short title; legislative intent; construction of "motor vehicle"**

Section 1. This Act shall be referred to, cited and known as the "Certificate of Title Act," and in the enactment hereof it is hereby declared to be the legislative intent and public policy of this state to lessen and

prevent the theft of motor vehicles, house trailers, also trailers and semi-trailers having a gross weight in excess of four thousand (4,000) pounds, and the importation into this state of, and traffic in, stolen motor vehicles, house trailers, trailers and semi-trailers as defined herein, and the sale of encumbered motor vehicles, house trailers, also trailers and semi-trailers as defined herein, without the enforced disclosure to the purchaser of any and all liens for which any such motor vehicle, house trailer, also trailers and semi-trailers as defined herein, stands as security, and the provisions hereof, singularly and collectively, are to be liberally construed to that end. The terms hereinafter set out, as herein defined, shall control in the enforcement and construction of this Act, and it is further provided that wherever the term "Motor Vehicle" appears in this Act, it shall be construed to include "house trailer," also "trailers" and "semi-trailers" having a gross weight in excess of four thousand (4,000) pounds; provided, however, that nothing in this Act shall apply to trailers or semi-trailers used solely for the transportation of farm products, if such products are not transported for hire. As amended Acts 1959, 56th Leg., p. 142, ch. 84, § 1.

Effective 90 days after May 12, 1959, date of adjournment.

#### "Trailer" defined

Sec. 2b. The term "trailer" means every vehicle having a gross unloaded weight in excess of four thousand (4,000) pounds designed or used to carry its load wholly on its own structure and to be drawn by a motor vehicle. Added Acts 1959, 56th Leg., p. 142, ch. 84, § 2.

Effective 90 days after May 12, 1959, date of adjournment.

#### "Semi-trailer" defined

Sec. 2c. The term "semi-trailer" means vehicles of the trailer type having a gross weight in excess of four thousand (4,000) pounds so designed or used in conjunction with a motor vehicle that some part of its own weight and that of its load rests upon or is carried by another vehicle. Added Acts 1959, 56th Leg., p. 142, ch. 84, § 2.

Effective 90 days after May 12, 1959, date of adjournment.

#### Alteration, forging or counterfeiting certificates; motor and vehicle numbers

##### Sec. 49.

(e). If no serial number is die stamped upon a house trailer, also trailer or semi-trailer having a gross weight in excess of four thousand (4,000) pounds, by the manufacturer of such house trailer, trailer or semi-trailer, or if the serial number so assigned and die stamped by the manufacturer has been removed or obliterated, the Department shall, upon proper application, assign a serial number for such house trailer, trailer or semi-trailer, and this assigned serial number shall be die stamped by the applicant at the place designated by the Department upon such house trailer, trailer or semi-trailer for which such serial number is assigned. The manufacturer's serial number or the serial number assigned by the Department shall be placed on the carriage or axle part of the house trailer, trailer or semi-trailer and shall be used as the major identification of the house trailer, trailer or semi-trailer in the issuance of a Certificate of Title thereon. As amended Acts 1959, 56th Leg., p. 142, ch. 84, § 3.

Effective 90 days after May 12, 1959, date of adjournment.

Section 5 of the Act of 1959 contained a severability clause.

## Art. 1436e. Shoplifting

**Definition**

Section 1. Any person while legally in a retail business establishment as an invitee or licensee who removes from its place, goods, edible meat or other corporeal personal property of any kind or character under the value of Fifty Dollars (\$50.00) kept, stored or displayed for sale with the intent to fraudulently take and to deprive the owner of the value of the same and to appropriate the same to the use and benefit of the person taking is guilty of shoplifting. Altering of label or marking on goods, edible meat or other corporeal personal property or transferring same from one container to another with intent to defraud the owner also constitutes the crime of shoplifting.

**Prevention of consequences of shoplifting**

Sec. 2. All persons have a right to prevent the consequences of shoplifting by seizing any goods, edible meat or other corporeal property which has been so taken, and bringing it, with the supposed offender, if he can be taken, before a magistrate for examination, or delivering the same to a peace officer for that purpose. To justify such seizure, there must, however, be reasonable ground to suppose the crime of shoplifting to have been committed and the property so taken, and the seizure must be openly made and the proceeding had without delay.

**Conviction; penalties**

Sec. 3. For the first conviction for a violation of this Act, the punishment shall be by imprisonment in jail not exceeding six (6) months, or by a fine of not more than Five Hundred Dollars (\$500.00), or both. If it be shown upon the trial of a case involving a violation of this Act that defendant has been once before convicted of the same offense, he shall, on his second conviction, be punished by confinement in the county jail for not less than thirty (30) days, nor more than six (6) months, or by a fine of not less than Fifty Dollars (\$50.00) nor more than One Thousand Dollars (\$1,000.00), or both. If it be shown upon the trial of a case involving a violation of this Act that the defendant has two or more times before been convicted of the same offense, he shall, upon the third or any subsequent conviction, be guilty of a felony, and the punishment shall be by confinement in the penitentiary for not less than one (1) nor more than five (5) years.

**Severability**

Sec. 4. If any section, paragraph, sentence, clause, or word of this Act is held to be unconstitutional, the remaining portions of the same, nevertheless, shall be valid; and the Legislature declares that the Act would have been enacted without such unconstitutional portion.

**Violation of existing laws**

Sec. 5. Any violation of existing law or laws prior to the effective date of this Act, whether prosecution is commenced or not, shall not be affected by this Act and the provisions of such existing law or laws shall remain in full force and effect as to the then existing violation.

**Repealer**

Sec. 6. All laws and parts of laws inconsistent or conflicting with this Act are hereby expressly repealed.



## Other offenses; election

Sec. 7. Where property is obtained in such manner that the acquisition thereof constitutes both shoplifting and some other offense, the party thus offending shall be amenable to prosecution at the state's election for shoplifting or for such other offense as may have been committed by him. Acts 1959, 56th Leg., p. 72, ch. 34.

Emergency. Effective March 26, 1959.

## CHAPTER FOURTEEN—DISEASES OF ANIMALS AND BEES

<p>Art. 1505a. Prevention of livestock diseases by regulating movement of livestock [New].</p>	<p>Art. 1525b—1. Unattenuated hog cholera virus; sale, exchange or distribution; violations; penalties [New]. 1525b—2. Duty of veterinarians to report diseases [New].</p>
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## Art. 1505. Live Stock Sanitary Commission

*Change of name of Live Stock Sanitary Commission to Texas Animal Health Commission, see Vernon's Ann.Civ.St. art. 7009a.*

## Art. 1505a. Prevention of livestock diseases by regulating movement of livestock

## Definitions

Section 1. As used in this Act the following terms shall have the following meanings unless the context clearly requires a different meaning. The meaning ascribed to the singular form shall also apply to the plural.

(a) The term "Commission" shall mean the Livestock Sanitary Commission of Texas.

(b) The term "livestock" means, and shall include, any bovine, equine, caprine, ovine or porcine animal.

(c) The term "person" means and includes any person, firm, partnership, corporation or association.

(d) The term "livestock market" means, and includes any stockyard, sales pavilion or sales ring where livestock are assembled and concentrated at regular or irregular intervals, for sale, trade, barter or exchange.

(e) The term "livestock market operator" means and includes any person, firm, partnership, corporation or association owning or operating any stockyard, sales pavilion or sales ring where livestock are assembled or concentrated at regular or irregular intervals for sale, trade, barter or exchange.

## Regulations; movement out of markets; tests, immunization or dipping

Sec. 2. It shall be the duty of the Commission to adopt regulations relating to movements of livestock out of livestock markets, to require such tests, immunization or dipping, as may be considered necessary as a protection against dissemination of contagious, infectious or communicable livestock diseases.

## Notice of intent to promulgate regulations; hearing

Sec. 2a. Before regulations of the Livestock Sanitary Commission relating to the movement of livestock out of livestock markets shall become

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

effective, notice of intent to promulgate such regulations shall be given by posting a copy of such proposed regulations at the courthouse door of each county seat in the State of Texas. Said notice shall also inform the public that on a designated date stated in such posted notice a hearing will be had at the office of the Livestock Sanitary Commission of Texas, at which hearing any person who objects to such proposed regulations or any part thereof shall have the right to appear either in person or by representative or both, and to state his objections. All such facts and evidence developed at such hearing shall be considered and evaluated by the Livestock Sanitary Commission and public notice shall be given by the Livestock Sanitary Commission within ten (10) days after such hearing stating whether or not such objections have been approved and adopted or have been disapproved and rejected by the Livestock Sanitary Commission.

**Testing and dipping facilities; access of commission representatives to market; violations**

Sec. 3. The Commission is hereby authorized to require the operators of all livestock markets herein defined to furnish adequate chutes, holding pens and to furnish or have access to such other essential testing and dipping facilities within the immediate vicinity.

Representatives of the Commission are hereby authorized to enter any livestock market for the exercise of any authority, or performance of any duty authorized under this Act.

Failure or refusal on the part of the livestock market operator to furnish adequate facilities or to permit representatives of the Commission to enter such market, or to exercise authority or perform such duty provided under this Act, shall constitute a misdemeanor and, upon conviction, such livestock market operator shall be fined not less than Twenty-five Dollars (\$25) nor more than One Hundred Dollars (\$100). Each day of violation will constitute a separate offense.

**Testing or vaccinating livestock**

Sec. 4. The testing or vaccination required by this Act shall be performed by accredited veterinarians or qualified personnel authorized by the Commission. The State of Texas shall not be required to pay the cost of fees charged for such testing or vaccination.

**Inspection prior to sale**

Sec. 5. All livestock consigned to and delivered on the premises of any livestock market shall, before being offered for sale, be visually inspected by an authorized inspector who shall, before livestock is removed from the livestock market, if deemed necessary, test or have tested, or vaccinated each and every animal consigned to such livestock market.

**Removal without certificate; fine**

Sec. 6. Any person who shall remove any livestock from any livestock market, without a certificate, as required in any regulation adopted by the Commission, shall be fined not less than Twenty-five Dollars (\$25) nor more than One Hundred Dollars (\$100) for each head of livestock removed from the livestock market in violation of regulations of the Commission.

**Violation of act**

Sec. 7. Any person or persons, their agent or employee, who shall violate any provision of this Act or any rule, regulations or requirement

adopted pursuant to this Act, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than Twenty-five Dollars (\$25) nor more than One Hundred Dollars (\$100) for each day, which shall constitute a separate offense. Acts 1959, 56th Leg., p. 428, ch. 191.

Effective 90 days after May 12, 1959, date Livestock Sanitary Commission, see Vernon's Ann.Civ.St. art. 7009.  
of adjournment.

#### Art. 1518. Failing to report charbon or anthrax

Duty of veterinarians to make report of diseases, see art. 1525b—2.

#### Art. 1525a. Regulations as to scabies, quarantine, dipping, and penalties

Change of name of Live Stock Sanitary Commission to Texas Animal Health Commission, see Vernon's Ann.Civ.St. art. 7009a.

#### Art. 1525b. Eradicating diseases among live stock and domestic fowls

##### Cooperation with United States Department of Agriculture; tuberculin testing

Sec. 22. (1) The Livestock Sanitary Commission is hereby authorized to cooperate with the United States Department of Agriculture and with County Commissioners Courts of this State, and it is hereby made the duty of County Commissioners Courts to cooperate with said Commission and the United States Department of Agriculture as hereinafter provided for the eradication of tuberculosis among cattle, under the provisions of this Act and of the rules and regulations of said Commission as herein provided for the purpose of the establishment of modified accredited areas in the State of Texas. The said County Commissioners Courts may at their discretion cooperate with said Commission and the United States Department of Agriculture, but it shall be the duty of said County Commissioners Courts to so cooperate upon the filing with said County Commissioners Courts of a petition signed by at least seventy-five per cent (75%) of the owners of cattle in the county as shown by the tax rolls of said county. The Livestock Sanitary Commission shall provide in its rules and regulations the manner, method and system of testing cattle for tuberculosis in said cooperative tuberculosis eradication work. The owners of cattle which have shown a positive reaction to the tuberculin test in said cooperative tuberculosis eradication work shall sell such reactors under the direction of said Commission for immediate slaughter at public slaughtering establishments where Federal post-mortem inspection is maintained; or said Commission may authorize said slaughter upon the owner's property or other place under the direction of said Commission. After such sale and slaughter the Livestock Sanitary Commission is authorized to pay such owners out of funds appropriated by the Legislature for that purpose an amount not to exceed one-third ( $\frac{1}{3}$ ) of the appraised value of such reactors after deducting the amount of salvage received for same. In no case shall any compensation be made by the State for more than Thirty-five Dollars (\$35.00) for any grade animal or more than Seventy Dollars (\$70.00) for any purebred animal; nor shall any of such payment be made until said owner complies with the rules and regulations of said Commission; nor shall any compensation be made in excess of the amount of compensation paid said owner for said reactors by the United States Department of Agriculture. The value of said animal shall be appraised by a representative

of said Commission or of said United States Department of Agriculture and a representative of the owner of said livestock, and if they cannot agree, then a third appraiser shall be appointed by these two appraisers and then the value shall be appraised by the agreement of any two of said three appraisers. It shall be unlawful for any positive reactors to the tuberculin test, regardless of whether said animals were tested in said cooperative tuberculosis eradication work to be slaughtered or otherwise disposed of except under the direction of the Livestock Sanitary Commission, and any person who kills or destroys or removes the carcass of any positive reactor from the place where the same is under quarantine or the place whereon said animal was tested, shall be fined the same as if he had violated the quarantine of said positive reactors under this Act.

(2) When the Livestock Sanitary Commission is conducting tuberculin tests in any county, in cooperation with the United States Department of Agriculture, for the purpose of maintaining this State and each county thereof as a Modified Accredited Tuberculosis Free Area, under the terms of uniform methods and rules of the United States Department of Agriculture, adopted by the Livestock Sanitary Commission of Texas, said Commission or its authorized representative is hereby authorized to examine, test and retest any and all cattle in this State, as may be required, to maintain the status of each county as a Modified Accredited Tuberculosis Free Area.

(3) Any herd, or herds, of cattle, or parts of herds in Modified Accredited Tuberculosis Free Areas, or any other area, shall be tested or retested at such intervals as may be deemed advisable or necessary by the Livestock Sanitary Commission to control and eliminate bovine tuberculosis.

(4) It shall be the duty of every owner, part owner or caretaker to assemble and submit his cattle for examination and tuberculin test when directed in writing by the Livestock Sanitary Commission or its authorized representative. Said notice, fixing the date and approximate time cattle are to be tested, shall be delivered by registered mail, to owner, part owner or caretaker ten (10) days prior to the date cattle are to be assembled for test.

(5) Such owners, part owners or caretakers shall provide reasonable assistance in confining their cattle and providing facilities in order that tuberculin tests may be properly administered to cattle to be tested. It shall also be their duty to return for observation the same cattle, at the same place and at a time designated by the Livestock Sanitary Commission or its representative.

(6) Owners, part owners or caretakers who fail or refuse to assemble cattle or to provide reasonable assistance and facilities for the tuberculin testing or observation of the results of such tests, at time and place directed in writing by said Commission, shall be fined not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200), and each day of failure or refusal shall be a separate offense.

(6a) No funds shall be paid to owner for slaughtered cattle except as provided in the General Appropriation Bill, it being the intention of the Legislature that no claims for reimbursement shall be made except those funds in the General Appropriation Bill. As amended Acts 1959, 56th Leg., p. 149, ch. 90, § 1.

Emergency. Effective 90 days after May 12, 1959, date of adjournment.

Vesicular exanthema; slaughter of infected swine; payment to owner; feeding garbage to swine; inspections

Sec. 22a. (1) The Livestock Sanitary Commission is hereby authorized to cooperate with the United States Department of Agriculture, for the eradication of vesicular exanthema, a disease affecting swine.

(2) The Commission shall provide in its rules and regulations the manner, method and system of testing swine for such disease in such cooperative eradication work.

(3) The Commission shall have authority to order swine infected with vesicular exanthema to be sold for immediate slaughter at public slaughtering establishments where Federal post mortem inspection is maintained; or the Commission may authorize such slaughter upon the owner's property, premises or other place under the direction of said Commission. Provided however, the owner shall have the right to appeal such order by the Commission, to the County Court, in the County where such swine are located.

(4) After such sale and slaughter, the Commission is authorized to pay the owner of such swine out of funds appropriated by the Legislature for that purpose in an amount not to exceed fifty per cent (50%) of the appraised value of such animals, after deducting the amount of salvage received for them by the owner. No payment shall be made unless the owner or owners of such swine have complied with the rules and regulations of the Livestock Sanitary Commission of Texas applicable to the particular swine for which payment is made nor shall any compensation be paid in excess of the amount of compensation paid such owner for such swine by the United States Department of Agriculture.

(5) The value of such animals shall be appraised by a representative of the Livestock Sanitary Commission or by a representative of the United States Department of Agriculture, and a representative of the owner or owners thereof. If they cannot agree, then a third appraiser shall be appointed by these two (2) appraisers and the value shall then be fixed by any two (2) of the three (3) appraisers.

(6) It shall be unlawful for any person to feed garbage to swine unless such garbage has been heated to a temperature of 212 degrees F (boiling point) for a period of thirty (30) consecutive minutes within forty-eight (48) hours prior to such feeding. Any person who violates this Subsection shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200), and each day of violation shall constitute a separate offense.

(7) The Livestock Sanitary Commission shall provide rules and regulations for the enforcement of this Section.

(8) The term "garbage" includes all of the refuse matter, animal or vegetable, and all putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of foods containing animal carcasses or parts thereof, and all waste material by-products of a restaurant, kitchen, cookery or slaughter house, and every refuse accumulation of animal or vegetable matter, liquid or otherwise.

(9) The term "person" means and includes any individual, firm, corporation, partnership or association.

(10) No compensation provided for in this Section shall be paid by the state to any owner of swine ordered sold and slaughtered if such swine have been fed raw garbage in violation of the provisions hereof.

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

(11) This Section shall not apply to an individual who feeds to his own swine the garbage from his own household, his own farm or his own ranch only.

(12) Representatives of the Livestock Sanitary Commission of Texas, including Members of said Commission, are hereby authorized and directed to enter upon the premises of any person for the purpose of making inspections of swine and of the heating or cooking equipment required under this Section; or for the exercise of any authority or the performance of any duty authorized under this Section. Any person who refuses to permit representatives of the Livestock Sanitary Commission of Texas to enter upon any property or premise of which he is the owner, tenant or caretaker, for the purpose of carrying out the provisions of this Section shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in a sum not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200) and each separate day on which said refusal is made shall constitute a separate offense. As amended Acts 1959, 56th Leg., p. 262, ch. 152, § 1.

Effective 90 days after May 12, 1959,  
date of adjournment.

Section 2 of the amendatory Act of 1959 repealed all conflicting laws and parts of laws to the extent of such conflict, Section 3 contained a severability clause.

Sec. 22b. Combined with section 22a.

This section was amended and combined with section 22a by Acts 1959, 56th Leg., p. 262, ch. 152, thereby eliminating this section.

#### Control and eradication of bovine brucellosis

Sec. 23A. (1) Purpose. It is the purpose of this Section to bring about the effective control and eventual eradication of bovine brucellosis in the State of Texas and to accomplish that purpose in the most effective, practical, and expeditious manner.

(2) The Livestock Sanitary Commission of Texas may enter into cooperative agreements with the United States Department of Agriculture for the control and eradication of bovine brucellosis in Texas.

(3) The Livestock Sanitary Commission of Texas, in cooperation with the United States Department of Agriculture, is hereby authorized to engage in area or county programs for the control and eradication of bovine brucellosis to the end that all the area of this State may eventually become a modified certified brucellosis free area.

(4) When seventy-five per cent (75%) of the cattle owners in any area or county in this State, as reflected on the current tax rolls, owning at least fifty-one per cent (51%) of the cattle within that affected area or county, as reflected by said tax rolls, shall petition the Livestock Sanitary Commission of Texas to have such area or county designated as a modified certified brucellosis free area, the Livestock Sanitary Commission of Texas may declare that county or area to be a brucellosis control area. If such area follows county boundary lines it shall be designated as a "County Brucellosis Control Area," the name of the county identifying the area.

(5) In the event that, for any valid reasons, the Livestock Sanitary Commission of Texas should decide that conditions within and surrounding the county originating such petition make it impractical to operate a brucellosis control area within the boundaries of such county, then the Texas Livestock Sanitary Commission is authorized to add additional territory to such county area in reasonable amount or to eliminate part of such county area in reasonable amount, and to establish the boundary of such control area along practical and reasonable lines, provided that, before

such control area can be established it must be determined that at least seventy-five per cent (75%) of the cattle owners within the boundaries of the area so established, owning at least fifty-one per cent (51%) of the cattle within that area, request the Texas Livestock Sanitary Commission to have such area designated as a modified, certified brucellosis free area. When an area not following county boundary lines is established as a brucellosis control area by the Texas Livestock Sanitary Commission such area shall be designated as "Special Brucellosis Control Area."

(6) In order to establish and designate an area, either County or Special, as a brucellosis control area, the Texas Livestock Sanitary Commission shall issue a proclamation describing the area by boundaries. Said proclamation shall state that said area is designated and established as a "Brucellosis Control Area," either County or Special, and state the date upon which brucellosis control work shall start within that area, which date shall be not less than ninety (90) days after the date of such proclamation. Such proclamation shall be publicized by posting copies thereof in at least three (3) public places within the affected area and at the door of the courthouse of the county seat or seats of the county or counties affected, which posting shall be made at least ninety (90) days before the effective date of the proclamation.

Said proclamation shall also fix the date, which shall be not less than thirty (30) days after the date of the proclamation, at which time a hearing will be had in the office of the Livestock Sanitary Commission of Texas, at which hearing any person owning cattle within the affected area who desires to protest the designation and establishment of the control area shall have the right to appear, either in person or by representative or both, and there express to the Livestock Sanitary Commission his views and opinions as to why such brucellosis control area should not be designated and established. Within ten (10) days after such hearing the Commission shall issue a statement showing its decision upon the question of whether or not such control area shall be designated and established and such decision by the Livestock Sanitary Commission shall be final.

(7) Two (2) types of brucellosis control areas may be established. These types are:

I. An area in which no testing shall be required but in which all female calves shall be required to be officially vaccinated within ages fixed by regulation of the Texas Livestock Sanitary Commission and in compliance with the regulations of such Commission relating to vaccination.

II. An area in which such tests, vaccinations, identifying practices, quarantines, disposition of infected animals and other practices as provided by regulations of the Texas Livestock Sanitary Commission shall be followed.

The petition of the cattle owners constituting the basis for the proclamation establishing the brucellosis control area shall state which type, "I" or "II," control area is desired in the affected area and the proclamation establishing the control area shall designate which type, "I" or "II," is established. No type control shall be established unless that type has been properly requested.

(8) "Type I" Control Area

After the effective date of the proclamation establishing an area, either County or Special, as a "Type I" brucellosis control area, it shall be the duty of all cattle owners owning cattle within the area to, at their own expense, have all female calves owned by them officially vaccinated for brucellosis in accordance with the applicable regulations issued by the Texas Livestock Sanitary Commission. Failure on the part of any person

owning cattle within the designated area to have female calves owned by him so vaccinated in accordance with said regulations shall constitute a misdemeanor and upon conviction shall be punished by a fine of not less than Ten Dollars (\$10), nor more than One Hundred Dollars (\$100), and each female calf owned by such person that is not so vaccinated in compliance with such regulations shall constitute a separate offense.

(9) "Type II" Control Area

Whenever the Livestock Sanitary Commission of Texas shall designate and establish an area, either County or Special, as a "Type II" brucellosis control area, the Livestock Sanitary Commission shall proceed to conduct such tests, vaccinations and other practices, and to enforce such rules and regulations as may be necessary to qualify said county for certification or recertification as a modified certified brucellosis free area as outlined in the uniform regulations of the United States Department of Agriculture and the Livestock Sanitary Commission of Texas. An area may be certified as a brucellosis free area when not more than one per cent (1%) of the cattle and not more than five per cent (5%) of the herds are positive to the official brucellosis agglutination test, exclusive of officially vaccinated animals under thirty (30) months of age, calves under six (6) months of age, steers and spayed heifers.

(10) The Livestock Sanitary Commission of Texas is prohibited from adopting any regulation dealing with brucellosis that would prohibit or interfere with the free movement of officially vaccinated calves from unquarantined herds under thirty (30) months of age within the State of Texas.

(11) In order to effectuate the provisions and purposes of this Section, the Livestock Sanitary Commission of Texas is hereby authorized to promulgate such rules and regulations and to require such reports and records as may be necessary to the testing, vaccinating and movement of cattle into and within said areas declared to be in the process of accreditation and into certified brucellosis free areas.

(12) Any person, firm or corporation that shall ship, drive, drift, haul, truck or otherwise transport cattle into and within any county or area declared to be in the process of accreditation or that has been designated as a modified brucellosis free area without written permit or certificate as provided for in accordance with the rules and regulations of the Livestock Sanitary Commission of Texas shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in a sum of not less than Ten Dollars (\$10) nor more than One Hundred Dollars (\$100) for each head of cattle which said person, firm, or corporation, railroad or other common carrier shall haul, drive, drift, lead or otherwise move into such designated area in violation hereof.

Provided, however, that no regulation shall ever prohibit the movement of cattle within such area by the owner thereof when such movement is confined to unquarantined contiguous lands owned or controlled by such owner.

(13) Representatives of the Livestock Sanitary Commission of Texas, including members of said Commission, are hereby authorized to enter into any public or private property for the exercise of any authority or the performance of any duty authorized under this Section. Any person who refuses to permit representatives of the Livestock Sanitary Commission to enter upon any property or premises of which he is owner, tenant, or caretaker for the purpose of carrying out the provisions of this Section, shall be deemed guilty of a misdemeanor and upon conviction shall be fined any sum not less than Ten Dollars (\$10) and not more than Two



Hundred Dollars (\$200), and each separate day on which said refusal is made shall be considered a separate offense.

(14) If a representative of the Commission desires to be accompanied by a peace officer, provisions of Section 6 of this Act with respect to issuing search warrants shall apply to representatives engaged in brucellosis control and eradication.

(15) The Livestock Sanitary Commission of Texas is hereby authorized to employ veterinarians, inspectors, stenographers and necessary clerical help and such other persons it may deem necessary for the performance of any duty under this Section or the enforcement of any provisions of this Section and may detail its veterinarians, inspectors and other persons for any duty authorized under this Section or incidental thereto.

(16) All tests and vaccinations provided in this Section may be given and conducted by any person certified by the Texas Livestock Sanitary Commission, whether such person be a Doctor of Veterinary Medicine, or not.

(17) Owners, part owners and caretakers owning or having charge of cattle located within a Type II brucellosis control area, shall submit their cattle, furnish sufficient labor and facilities when directed by the Livestock Sanitary Commission of Texas or its authorized representative, in order that necessary blood or milk specimen may be secured from their cattle or in order that they may be vaccinated, tattooed, branded, ear notched or tagged in accordance with the regulations of the Livestock Sanitary Commission of Texas. Owners and caretakers owning or having charge of cattle located within a Type II brucellosis control area who fail or refuse to gather their cattle and furnish necessary labor and facilities in drawing blood or milk samples, vaccinating and identifying animals shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than Ten Dollars (\$10) nor more than Two Hundred Dollars (\$200) and each day of refusal or failure to submit cattle and render the assistance required under this Section shall be a separate offense.

(18) Should evidence of infection be disclosed in any of the animals required to be tested, such animals that react to the test shall be fire branded with the letter "B" on the left jaw and such cattle and herds shall be handled in accordance with regulations of the Livestock Sanitary Commission of Texas which shall provide for the issuance of quarantines, the manner, method and system of disposing of reactor cattle, the testing and retesting of infected herds, and the cleaning and disinfection of premises following removal of reactor cattle.

(19) Indemnities shall not be paid for any cattle which may be reactors to any test for brucellosis made under the provisions of this Section.

(20) Before regulations of the Livestock Sanitary Commission relating to control work of brucellosis in all types of areas shall become effective, notice of intent to promulgate such regulations shall be given by publication in at least three (3) newspapers having state-wide circulation. Said notice shall also inform the public that on a designated date stated in such published notice a hearing will be had at the office of the Livestock Sanitary Commission of Texas, at which hearing any person who objects to such proposed regulations or any part thereof shall have the right to appear either in person or by representative or both, and to state his objections. All such facts and evidence developed at such hearing shall be considered and evaluated by the Livestock Sanitary Commission and public notice shall be given by the Livestock Sanitary Commission within ten (10) days after such hearing stating whether or not such ob-

jections have been approved and adopted or have been disapproved and rejected by the Livestock Sanitary Commission.

(21) If any person, corporation or other party at interest be dissatisfied with any rule, order, act or regulation adopted by said Livestock Sanitary Commission of Texas, separately or in conjunction with the United States Department of Agriculture or any other agency, such dissatisfied person, corporation or other entity, after failing to get relief from said Commission, may within twenty (20) days of the date of issuance of such rule, order, act or regulation, file a petition setting forth the particular objection to such rule, order, act or regulation or either or all of them in the District Court of the county where said order, act or regulations have been or proposed to be enforced, against said Livestock Sanitary Commission of Texas as defendant. In all trials under this Section the burden of proof shall rest upon the plaintiff, who must show by the preponderance of evidence that the rules, orders, acts or regulations complained of are unreasonable to it or them. Acts 1929, 41st Leg., 1st C.S., p. 114, ch. 52, § 23A, added Acts 1959, 56th Leg., p. 418, ch. 188, § 1.

Emergency. Effective May 20, 1959.

Section 2 of the amendatory Act of 1959 repealed all conflicting laws and parts of laws to the extent of such conflict and section 3 contained a severability clause.

Change of name of Live Stock Sanitary Commission to Texas Animal Health Commission, see Vernon's Ann.Civ.St. art. 7009a.

#### Art. 1525b—1. Unattenuated hog cholera virus; sale, exchange or distribution; violations; penalties

Section 1. It shall be unlawful for any person, firm, partnership, corporation, or association to sell or offer for sale, barter, exchange, or give away unattenuated hog cholera virus in Texas.

Sec. 2. Unattenuated hog cholera virus means a virus which has not been modified or inactivated.

Sec. 3. Any person, firm, partnership, corporation or association violating this Act shall be guilty of a misdemeanor, and upon conviction shall be fined not less than Twenty-five Dollars (\$25) nor more than One Hundred Dollars (\$100).

Sec. 4. Nothing in this Act shall prohibit the acquisition, propagation, manufacture, or use of unattenuated hog cholera virus by and on the licensed premises of firms operating under United States Veterinary License issued by the Secretary of Agriculture of the United States. Nothing in this Act shall prohibit the manufacture of unattenuated hog cholera virus by firms operating under United States Veterinary License for sale or distribution in states where use of unattenuated hog cholera virus is permitted. Provided, however, recognized colleges, universities and schools and laboratories engaged in research activities may keep on hand amounts of the vaccine for purely experimental and research activities. Acts 1959, 56th Leg., p. 81, ch. 40.

Effective 90 days after May 12, 1959, date of adjournment.

##### Title of Act:

An Act to prohibit the sale, barter, exchange or distribution of unattenuated hog cholera virus in the State of Texas; defining unattenuated hog cholera virus;

providing a penalty for violation; making certain exceptions; and declaring an emergency. Acts 1959, 56th Leg., p. 81, ch. 40.

## Art. 1525b—2. Duty of veterinarians to report diseases

**Report of existence of diseases**

Section 1. It shall be the duty of all veterinarians in the State of Texas to report to the Livestock Sanitary Commission of Texas within twenty-four (24) hours after diagnosis the existence of the following diseases among livestock or domestic fowl: anthrax, scabies, hog cholera, vesicular exanthema, foot and mouth disease, vesicular stomatitis, piroplasmiasis or ornithosis.

**Death from anthrax; preparation and submission of specimen**

Sec. 2. Any veterinarian, upon pronouncing that any animal has died from anthrax as evidenced by clinical or post-mortem examination, shall immediately prepare a suitable specimen and submit it to the Livestock Sanitary Commission or a laboratory approved by the Livestock Sanitary Commission for examination. The name and address of the owner or caretaker and the location of the premises on which the animal died shall be submitted with the specimen.

**Required information**

Sec. 3. It shall be the duty of the veterinarian, upon diagnosing any of the diseases to which reference is made in this Act, to furnish to the Livestock Sanitary Commission information concerning species and number of animals or domestic fowl, clinical diagnosis and post-mortem findings and death losses, if such losses have occurred.

**Burning of carcass**

Sec. 4. It shall also be the duty of the veterinarian to inform the owner or caretaker of the livestock or domestic fowl which have died of anthrax or ornithosis, or suspected of dying of these diseases, to consume by fire the carcass or carcasses thereof as provided by Chapter 52, Acts of the Forty-first Legislature, First Called Session, as amended, which is compiled as Article 1525b, Vernon's Annotated Penal Code.

**Violations and penalties**

Sec. 5. Willful failure or refusal on the part of any veterinarian to comply with the provisions of this Act shall be deemed a misdemeanor and, upon conviction, he shall be fined not less than Ten Dollars (\$10) nor more than One Hundred Dollars (\$100). Acts 1959, 56th Leg., p. 512, ch. 225.

Effective 90 days after May 12, 1959, date of adjournment.

Failure to report anthrax, see art. 1518.

Filing of veterinarians' records with Livestock Sanitary Commission, see art. 1525b, § 15.

Veterinary licensing act, see Vernon's Ann.Civ.St. art. 7465a.

**Art. 1525c. Tick Eradication Law**

Change of name of Live Stock Sanitary Commission to Texas Animal Health Com-

mission, see Vernon's Ann.Civ.St. art. 7009a.

**CHAPTER FIFTEEN—EMBEZZLEMENT AND CONVERSION****Art. 1538. [1426] [948] [795] Conversion of estate**

If any executor, administrator, guardian or trustee having charge of any estate, real, personal or mixed, shall unlawfully and with intent to defraud any creditor, heir, legatee, ward, distributee, beneficiary or settlor of a trust interested in such estate, convert the same or any part thereof to his own use, he shall be punished as is provided in cases of theft. As amended Acts 1959, 56th Leg., p. 930, ch. 427, § 1.

Emergency. Effective May 30, 1959.

**CHAPTER SIXTEEN—SWINDLING AND CHEATING**

Art.

1554a. False wholesale advertisement  
[New].

Art.

1555b. Use of expired or revoked credit cards for purchase of motor vehicle supplies, equipment and services [New].

**Art. 1545. 1421, 943, 790 "Swindling" defined**

"Swindling" is the acquisition of any personal or movable property, money, goods, services, or instrument of writing conveying or securing a valuable right, or any other thing of value, by means of some false or deceitful pretense or device, or fraudulent representation, with intent to appropriate the same to the use of the party so acquiring, or of destroying or impairing the right of the party justly entitled to the same. As amended Acts 1959, 56th Leg., p. 885, ch. 408, § 5.

Emergency. Effective May 30, 1959.

Section 6 of the amendatory Act of 1959 provided that in all prosecutions under this Act, process shall be issued and served in the county or out of the county where the prosecution is pending and have the same binding force and effect as though the offense being prosecuted were a felony; and all officers issuing and serving such process in or out of the county wherein the prosecution is pending, and all wit-

nesses from within or without the county wherein the prosecution is pending, shall be compensated in like manner as though the offense were a felony in grade.

Service of process in prosecutions involving use of expired or revoked credit cards for purchase of motor vehicle supplies, equipment and services, see note under art. 1555b.

**Art. 1554a. False wholesale advertisement**

Section 1. It shall be unlawful for any person, firm, association or corporation to misrepresent the true nature of its business by use of the words manufacturer, wholesaler, retailer, or words of similar import or for any person, firm, association or corporation to represent itself as selling at wholesale or use the word wholesale in any form of sale or advertising unless such person, firm, association or corporation is actually selling at wholesale those items advertised for the purpose of resale. For the purpose of this Act the term "wholesale" shall mean a sale made for the purpose of resale and not one made to the consuming purchaser.

Sec. 1a. It shall be unlawful for any person, firm, association, or corporation to misrepresent the true ownership of a business for the purpose of carrying on a liquidation sale, auction sale, or other sale which represents that the firm is going out of business; and be it further provided that any person, firm, association or corporation which advertises in any manner whatever a liquidation sale, auction sale, or going out of business

sale shall clearly state the true name and permanent address of the actual owner or owners of such business in any and all such advertising.

Sec. 2. Any person who willfully and knowingly violates any provision of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than One Hundred Dollars (\$100) and not more than Five Hundred Dollars (\$500). Acts 1959, 56th Leg., p. 530, ch. 234.

Effective 90 days after May 12, 1959,  
date of adjournment.

Section 3 of the Act of 1959 contained a  
severability clause.

Corporations, purpose of conducting  
wholesale business, see Vernon's Ann.Civ.  
St. art. 1302(40).

#### Art. 1555b. Use of expired or revoked credit cards for purchase of motor vehicle supplies, equipment and services

Section 1. It shall be unlawful for any person to knowingly make use of any expired or revoked credit card or "courtesy card" in obtaining credit for the purchase of gasoline, motor oil, or other motor vehicle supplies, equipment, or services.

Sec. 2. The presentation of an expired or revoked credit card for the purpose of obtaining credit or the privilege of making a deferred payment for the article or service purchased shall be prima facie evidence of knowledge that the credit card had expired or had been revoked, if the purchaser shall not have paid to the seller the total amount of the credit purchase within ten (10) days after receiving notice from the seller that such credit card had expired or had been revoked at the time the purchase was made, which notice shall also state the amount due on such purchase.

Sec. 3. The word "notice" as used herein shall be construed to include either notice given to the purchaser in person or notice given to him in writing. Such notice in writing shall be conclusively presumed to have been given when deposited, as registered or certified matter, in the United States mail, addressed to such person at his address, or the address of the person to whom the card was issued, as it appears on the credit card.

Sec. 4. For the first conviction for a violation of this Act, in the event the amount of the credit purchase is Five Dollars (\$5) or less, the punishment shall be a fine not exceeding Two Hundred Dollars (\$200). For the first conviction for a violation of this Act, in the event the amount of the credit purchase is in excess of Five Dollars (\$5) but less than Fifty Dollars (\$50), punishment shall be confinement in the county jail for not exceeding two (2) years, or by a fine not exceeding One Thousand Dollars (\$1,000), or by both such fine and confinement.

If it be shown on the trial of a case involving a violation of this Act in which the amount of the credit purchase is less than Fifty Dollars (\$50), that the defendant has been once before convicted of the same offense, regardless of the amount of the credit purchase involved in the first conviction, he shall, on his second conviction, be punished by confinement in the county jail for not less than thirty (30) days nor more than two (2) years, and by a fine not exceeding Two Thousand Dollars (\$2,000).

If it be shown upon the trial of a case involving a violation of this Act where the amount of the credit purchase is less than Fifty Dollars (\$50), that the defendant has two (2) or more times before been convicted of the same offense, regardless of the amount of the credit purchase involved in the first two (2) convictions, upon the third or any subsequent conviction the punishment shall be confinement in the penitentiary for not less than two (2) years nor more than ten (10) years, and by a fine not exceeding Five Thousand Dollars (\$5,000).

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

For a violation of this Act, in the event the amount of the credit purchase is Fifty Dollars (\$50) or more, punishment shall be by confinement in the penitentiary for not less than two (2) years nor more than ten (10) years, and by a fine not exceeding Ten Thousand Dollars (\$10,000). Acts 1959, 56th Leg., p. 885, ch. 408.

Emergency. Effective May 30, 1959.

Section 5 of Acts 1959, 56th Leg., p. 885, ch. 408 amended art. 1545.

Section 6 provided that in all prosecutions under this Act, process shall be issued and served in the county or out of the county where the prosecution is pending and have the same binding force and effect as though the offense being prosecuted

were a felony; and all officers issuing and serving such process in or out of the county wherein the prosecution is pending, and all witnesses from within or without the county wherein the prosecution is pending, shall be compensated in like manner as though the offense were a felony in grade.

## TITLE 18—LABOR

### CHAPTER SIX—WORKMEN AND FIREMEN

Art. 1583. Repealed. Acts 1959, 56th Leg., p. 781, ch. 356, § 3. Eff. 90 days after May 12, 1959, date of adjournment

Prior to repeal of this article by the Act of 1959, subd. 6 was repealed by Acts 1955, 54th Leg., p. 309, ch. 65, § 2. See, now, art. 1583—1.

Art. 1583—1. Hours of work of firemen and policemen; vacations

Sec. 6. It shall be unlawful for any city having more than ten thousand (10,000) inhabitants but not more than sixty thousand (60,000) inhabitants, according to the last preceding Federal Census, to require or permit any fireman to work more than seventy-two (72) hours during any one calendar week. It shall be unlawful for any city having more than sixty thousand (60,000) inhabitants but not more than one hundred twenty-five thousand (125,000) inhabitants, according to the last preceding Federal Census, to require or permit any fireman to work more than an average, during a calendar year, of sixty-three (63) hours per week. It shall be unlawful for any city having more than one hundred twenty-five thousand (125,000) inhabitants, according to the last preceding Federal Census, to require or permit any fireman to work more than an average, during a calendar year, of sixty (60) hours per week.

Provided further, that in any city having more than ten thousand (10,000) inhabitants, according to the last preceding Federal Census, the number of hours in the work week of members of the fire department whose duties do not include fighting fires, including but not limited to mechanics, clerks, investigators, inspectors, fire marshals, fire alarm dispatchers and maintenance men, shall not exceed the number of hours in the normal work week of the majority of the employees of said city other than firemen and policemen.

Provided further, that in computing the hours in the work week of firemen subject to the provisions of the preceding paragraph, there shall be included and counted any and all hours during which such firemen are required to remain available for immediate call to duty by continuously remaining in contact with a fire department office by telephone or by radio.

Provided, however, that in any such city having more than ten thousand (10,000) inhabitants, in the event of an emergency, firemen may be required to work more than the maximum number of hours herein provided.

ed; and in such event firemen working more than the maximum hours herein provided shall be compensated for such overtime at a rate equal to one and one-half times the compensation paid to such firemen for regular hours. As amended Acts 1955, 54th Leg., p. 309, ch. 65, § 1; Acts 1959, 56th Leg., p. 781, ch. 356, § 1.

Sec. 6A. It shall be unlawful for any city having more than ten thousand (10,000) inhabitants, according to the last preceding Federal Census, to require or permit any policeman to work more hours during any calendar week than the number of hours in the normal work week of the majority of the employees of said city other than firemen and policemen.

Provided, however, that in any such city having more than ten thousand (10,000) inhabitants, in the event of an emergency, policemen may be required to work more than the number of hours in the normal work week of the majority of other city employees; and in the event policemen are ordered to work a greater number of hours than the number of hours in such normal work week of other city employees, such policemen shall be compensated for any such overtime at a rate equal to one and one-half times the compensation paid to such policemen for regular hours. Added Acts 1959, 56th Leg., p. 781, ch. 356, § 2.

Sec. 6B. The governing body of each city which comes under the provisions of this Act shall put into effect the provisions hereof, without referendum or election, on or before the first day of the next fiscal year of such city after the effective date of this Act. Added Acts 1959, 56th Leg., p. 781, ch. 356, § 2.

Effective 90 days after May 12, 1959,  
date of adjournment.

**TITLE 19—MISCELLANEOUS OFFENSES**

Chap.		Art.
15A. Water Safety Act [New]		1722a

**CHAPTER TEN—NURSERY STOCK**

**Art. 1699. [727] Unlawful delivery**

Importation of camellia plants and flowers, see Vernon's Ann.Civ.St. art. 131a.

**CHAPTER FIFTEEN A—WATER SAFETY ACT [NEW]**

Art.  
1722a. Water Safety Act.

**Art. 1722a. Water Safety Act**

**Declaration of Policy**

Section 1. This Act shall be referred to as the "Water Safety Act." It is the policy of this State to promote safety for persons and property in and connected with the use, operation and equipment of vessels and to promote uniformity of laws relating thereto.

**Definitions**

Sec. 2. As used in this Act, unless the context clearly requires a different meaning:

(1) "Vessel" means every description of watercraft, other than a sea-plane on water, used or capable of being used as transportation on water or which operates at night, and uses any means of locomotion other than paddle, oars, or poling.

(2) "Motorboat" means any vessel propelled by machinery, whether or not such machinery is the principal source of propulsion, but shall not include a vessel which has a valid marine document issued by the Bureau of Customs of the United States Government, or any federal agency successor thereto.

(3) "Owner" means the person who claims lawful possession of a vessel by virtue of legal title or equitable interest therein which entitles him to such possession.

(4) "Waters of this State" means any public waters within the territorial limits of this State; provided however, private owned waters shall be excluded from the provisions of this Act.

(5) "Person" means an individual, partnership, firm, corporation, association, or other entity.

(6) "Operate" means to navigate or otherwise use a motorboat or a vessel.

(7) "Department" means State Highway Department.

(8) "Dealer" means a person, firm, or corporation engaged in the business of selling motorboats.



(9) "Boat Livery" means a business establishment engaged in renting or hiring out motorboats for profit.

#### Operation of Unnumbered Motorboats

Sec. 3. Every motorboat on the waters of this State shall be numbered, except as provided by exemptions in this Act. No person shall operate or give permission for the operation of any motorboat on such waters unless the motorboat is numbered as required by this Act which numbering system shall be in accord with the Federal Boating Act of 1958 and subsequent amendments thereto, and unless (1) the Certificate of Number awarded to such motorboat is in full force and effect, and (2) the identifying number set forth in the Certificate is properly displayed on each side of the bow of such motorboat.

#### Identification Number

Sec. 4. (a) On or before March 1, 1960, the owner of each motorboat requiring numbering by this State shall file an application for number with the Department on forms approved by it. The application shall be signed by the owner of the motorboat and shall be accompanied by a fee for which is hereinafter provided. Upon receipt of the application in approved form, the Department shall enter the same upon the records of its office and issue to the applicant a Certificate of Number stating the number awarded to the motorboat and the name and address of the owner. The owner shall paint on or attach to each side of the motorboat or vessel near the bow thereof the identification number in such manner as may be prescribed by the Department. The number shall be clearly visible and maintained in legible condition. The Certificate of Number shall be pocket size. The form of Certificate of Number, application form, and manner of renewal shall be prescribed by the Department, provided, however, that Certificate of Number does not have to physically be on the person of the operator. Partial fees for newly purchased watercraft or other boats not previously operated within this State may be paid on a quarterly basis. The certificate of number provided for herein shall bear the following legend "This license required by Act of the United States Congress."

(b) The owner of any vessel or motorboat for which a current Certificate of Number has been awarded pursuant to any federal law or a federally approved numbering system of another state shall, if such motorboat or vessel is operated on the waters of this State in excess of ninety (90) days, make application for a Certificate of Number in the manner prescribed in this Act for a resident of this State.

(c) The owner shall furnish the Department notice of the transfer of all or any part of his interest other than the creation of a security interest in a motorboat numbered in this State or of the destruction or abandonment of such motorboat, within a reasonable time thereof. In all such cases, the notice shall be accompanied by a surrender of the Certificate of Number. When the surrender of the certificate is by reason of the motorboat being destroyed or abandoned, the Department shall cancel the certificate and enter such fact in the records. The purchaser of a motorboat shall, within a reasonable time after acquiring same, present evidence of ownership thereof and make application to the Department for transfer to him of the Certificate of Number issued to such motorboat, giving his name, address, and number of the motorboat and shall at the same time pay to the Department a fee of One Dollar (\$1). Upon receipt of the application and fee the Department shall transfer the Certificate of Number issued for such motorboat to the new owner. Unless such application is made and fee paid within a reasonable time, such motorboat shall

be deemed to be without Certificate of Number, and it shall be unlawful for any person to operate such motorboat until the certificate is issued.

(d) The Department may award any Certificate of Number directly or may authorize any person to act as agent for awarding of certificates. In the event that a person accepts authorization he shall execute a faithful performance bond of not less than One Thousand Dollars (\$1,000) in favor of the State of Texas, and may be assigned a block or blocks of numbers and certificates which upon award, in conformity with this Act and with any rules and regulations of the Department, shall be valid as if awarded directly by the Department. Such agent shall be entitled to a fee for his services not to exceed ten per cent (10%) of the fee for each original certificate.

(e) All ownership records of the Department made or kept pursuant to this Act shall be public records. Copies of all rules and regulations pursuant to this Act shall be furnished without cost with each Certificate of Number issued.

(f) Every Certificate of Number awarded pursuant to this Act shall continue in full force and effect for a period of three (3) years unless sooner terminated or discontinued in accordance with the provisions of this Act. Certificates of Number shall be valid for the triennium from April 1 of one year to March 31 of the third succeeding year, both days inclusive. As amended Acts 1959, 56th Leg., 2nd C.S., p. 160, ch. 40, § 1.

Emergency. Effective July 30, 1959.

(g) Any holder of a Certificate of Number shall notify the Department within a reasonable time, if his address no longer conforms to the address appearing on the certificate and shall, as a part of the notification, include his new address. The Department may provide in its regulations for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or for the alteration of the outstanding certificate to show the new address of the holder. Changes of address shall be noted on the records of the Department.

(h) In the event that any Certificate of Number becomes lost, mutilated or illegible, the owner of the motorboat for which the certificate was issued may obtain a duplicate upon application to the Department and the payment of a fee of One Dollar (\$1).

(i) It shall be unlawful for any person to paint, attach, or otherwise display on either side of the bow of any motorboat any number other than the number awarded to said motorboat or granted reciprocity pursuant to this Act.

(j) It shall be unlawful for any person to deface or alter the Certificate of Number or number assigned and appearing on the bow of any boat.

(k) An application for renewal of a Certificate of Number shall be made by the owner on an application therefor which must be received by the Department within a period consisting of the last ninety (90) days before the expiration date on the Certificate of Number and the same number will be issued upon renewal. Any application not so received shall be treated in the same manner as an original application.

#### Manufacturer's Serial Number

Sec. 5. All new boats manufactured for sale in Texas after April 1, 1960, must carry a manufacturer's serial number stamped on or laminated into the structure of a boat before the owner thereof may obtain a Certificate of Number under this Act.

**Dealer's and Manufacturer's Number**

Sec. 6. (a) Any dealer or manufacturer of motorboats in this State may, instead of securing a Certificate of Number for each motorboat he may wish to show or demonstrate or test on waters of this State shall procure a Dealer's and Manufacturer's Number which shall be attached to any motorboat which he sends temporarily on the waters. The three (3) year fee for a Dealer's and Manufacturer's Number shall be Twenty-five Dollars (\$25). Every Dealer or Manufacturer applying for such a Number shall apply on forms provided by the Department. The application shall state that the applicant is a dealer or manufacturer within the meaning of this Act, and the facts stated on the application shall be sworn before an officer authorized to administer oaths. No such Number shall be issued until the provisions of this Article have been satisfied.

(b) Each Dealer or Manufacturer holding a Dealer's or Manufacturer's Number may issue a reasonable temporary facsimile of such number which may be used by any authorized person. A person purchasing a motorboat may use the Dealer's Number for a period not to exceed ten (10) days, prior to filing application for number. The form of the facsimile of the Dealer's and Manufacturer's Number and the manner of display shall be prescribed by the Department.

**Classification and Required Equipment**

Sec. 7. (a) Motorboats subject to the provisions of this Act shall be divided into four (4) classes as follows:

Class A. Less than sixteen (16) feet in length.

Class 1. Sixteen (16) feet or over and less than twenty-six (26) feet in length.

Class 2. Twenty-six (26) feet or over and less than forty (40) feet in length.

Class 3. Forty (40) feet or over.

(b) Every vessel or motorboat when not at dock in all weathers from sunset to sunrise shall carry and exhibit at least one bright light, lantern, or flare up and the following lights when under way, and during such time no other lights which may be mistaken for those prescribed shall be exhibited:

(1) Every motorboat of Class 1 shall carry the following light:

First. A white light aft to show all around the horizon.

Second. A combined lantern in the fore part of the vessel and lower than the white light aft, showing green to starboard and red to port, so fixed as to throw the light from right ahead to two points abaft the beam on their respective sides.

(2) Every motorboat of Classes 2 and 3 shall carry the following lights:

First. A bright white light in the fore part of the vessel as near the stem as practicable, so constructed as to show an unbroken light over an arc of the horizon of twenty (20) points of the compass, so fixed as to throw the light ten (10) points on each side of the vessel; namely, from right ahead to two (2) points abaft the beam on either side.

Second. A bright white light aft to show all around the horizon and higher than the white light forward.

Third. On the starboard side a green light so constructed as to show an unbroken light over an arc of the horizon of ten (10) points of the compass, so fixed as to throw the light from right ahead to two (2) points

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

abaft the beam on the starboard side. On the port side a red light so constructed as to show an unbroken light over an arc of the horizon of ten (10) points of the compass, so fixed as to throw the light from right ahead to two (2) points abaft the beam on the port side. The said side lights shall be fitted with inboard screen of sufficient length so set as to prevent these lights from being seen across the bow.

(3) Motorboats of Classes A and 1 when propelled by sail alone shall carry the combined lantern, but not the white light aft, prescribed by this Section. Motorboats of Classes 2 and 3, when propelled by sail alone, shall carry the colored side lights, suitably screened, but not the white lights, prescribed by this Section. Motorboats of all classes, when so propelled, shall carry, ready at hand, a lantern or flashlight showing a white light which shall be exhibited in sufficient time to avert collision.

(4) Every white light prescribed by this Section shall be of such character as to be visible at a reasonable distance. Every colored light prescribed by this Section shall be of such character as to be visible at a reasonable distance. The word "visible" in this Subsection, when applied to lights, shall mean visible on a dark night with clear atmosphere.

(5) When propelled by sail and machinery, any motorboat shall carry the lights required by this Section for a motorboat propelled by machinery only.

(c) Any vessel may carry and exhibit lights required by the Federal Regulations for Preventing Collisions at Sea, 1948, Federal Act of October 11, 1951 (33 USC 143-147d) as amended, in lieu of the lights required by Subsection (b) of this Section.

(d) Every motorboat or vessel shall have aboard one life preserver, buoyant vest, ring buoy, or buoyant cushion of the type approved by the Commandant of the United States Coast Guard in good and serviceable condition for each person on board.

(e) No person shall operate or give permission for the operation of a vessel which is not equipped as required by this Section or modification thereof.

#### Exemption from Numbering Provisions of This Act

Sec. 8. A motorboat shall not be required to be numbered under this Act if it is:

(1) Already covered by a number in full force and effect which has been awarded to it pursuant to Federal law or a Federally-Approved numbering system of another state; provided, that such motorboat shall not have been within this State for a period in excess of ninety (90) consecutive days.

(2) A motorboat from a country other than the United States temporarily using the waters of this State.

(3) A motorboat whose owner is the United States, a State or subdivision thereof.

(4) A ship's lifeboat.

(5) A motorboat belonging to a class of motorboats which has been exempted from numbering by the Department after said agency has found that the numbering of motorboats of such class will not materially aid in their identification; or if an agency of the Federal Government has a number system applicable to the class of motorboats to which the motorboat in question belongs, after the Department has further found that the motorboat would also be exempt from the numbering if it were subject to the federal law.

(6) All motorboats of ten (10) horsepower or under shall be exempt from the numbering provisions, and from the safety equipment provi-

sions except in so far as they shall be required to have one approved life preserver for each person aboard, and a white light to exhibit between the hours of sunset and sunrise.

#### Boat Liveries

Sec. 9. (a) The owner of a boat livery shall keep a record of: the name and address of the persons hiring any vessel which is designed or permitted by him to be operated as a motorboat; the Certificate of Number thereof; the time and date of departure and the expected time of return. The record shall be kept six (6) months.

(b) Boat liveries shall make application directly to the Department on forms provided by the Department. The application shall state the applicant livery is within the meaning of this Act, and the facts stated in the application shall be sworn before an officer authorized to administer oaths.

#### Prohibited Operation

Sec. 10. It shall be unlawful for any person to operate any motorboat or vessel or manipulate any water skis, aquaplane, or similar device in a willfully or wantonly reckless or negligent manner so as to endanger the life, limb, or property of any person.

#### Collisions, Accidents and Casualties

Sec. 11. (a) It shall be the duty of the operator of a vessel involved in a collision, accident or casualty, so far as he can do without serious danger to his own vessel, crew and passengers (if any), to render to other persons affected by the collision, accident or casualty such assistance as may be practicable and as may be necessary in order to save them from or minimize any danger caused by the collision, accident or casualty and also to give his name, address and identification of his vessel in writing to any person injured and to the owner of any property damaged in the collision, accident or other casualty.

(b) In the case of collision, accident or other casualty involving a vessel, the operator thereof, if the collision, accident or other casualty results in death or injury to a person or damage to property in excess of One Hundred Dollars (\$100) shall file with the Department a full description as said agency may, by regulation require on or before thirty (30) days.

(c) These accident reports shall be confidential and shall not be admissible in court as evidence.

(d) Any person who operates any vessel or manipulates any water skis, aquaplane or similar device, upon the waters of this State while such person is intoxicated, or under the influence of intoxicating liquor, or while under the influence of any narcotic drugs or barbituates<sup>1</sup> or marijuana shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than Fifty Dollars (\$50) nor more than Five Hundred Dollars (\$500) or by imprisonment of not to exceed six (6) months, or both.

<sup>1</sup> So in enrolled bill.

#### Water Skis and Aquaplanes

Sec. 12. (a) No motorboat shall have in tow or shall otherwise be assisting in towing a person on water skis, aquaplane or similar contrivance from the period of one hour after sunset to one hour prior to sunrise; provided that this Subsection shall not apply to motorboats

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used in duly authorized water ski tournaments, competitions, exhibitions or trials therefor where adequate lighting is provided.

(b) All motorboats having in tow or otherwise assisting in towing a person on water skis, aquaplane or similar contrivance, shall be operated in a careful and prudent manner and at a reasonable distance from persons and property so as not to endanger the life or property of any person.

#### **Local Regulation Prohibited**

Sec. 13. (a) The provisions of this Act, and of other applicable laws of this State, shall govern the operation, equipment, numbering and all other matters relating thereto whenever any vessel shall be operated on the waters of this State, or when any activity regulated by this Act shall take place thereon, but nothing in this Act shall be construed to prevent the adoption of any ordinance or local law relating to operation and equipment of vessels, the provisions of which are consistent with the provisions of this Act, amendments thereto or regulations issued thereunder, provided further that an incorporated municipality may adopt ordinances limiting the horsepower of motorboats on all lakes owned by or situated in the jurisdictional limits of such municipality.

#### **Transmittal of Information**

Sec. 13A. In accordance with any request duly made by an authorized official or agency of the United States any information compiled or otherwise available to the Department pursuant to Section 11(b) shall be transmitted to said official or agency of the United States.

#### **Penalties**

Sec. 14. (a) Every person who violates or fails to comply with any provision of this Act, shall be guilty of a misdemeanor.

(b) Every person convicted of a misdemeanor for which another penalty is not provided shall be punished by a fine of not less than Ten Dollars (\$10) nor more than Fifty Dollars (\$50).

#### **Enforcement**

Sec. 15. (a) All peace officers of this State and its political subdivisions shall have and are hereby given authority as enforcement officers for the purposes of this Act, and they and each of them shall have the power and authority to enforce the provisions of this Act by arrest and the taking into custody any person who may commit any Act or offense prohibited by this Act or any person who may violate any provision of this Act, provided, however, that such person shall not be taken into custody unless he first refuses to sign a promise to appear in court within thirty (30) days as provided below.

(b) Any such officer in order to enforce the provisions of this Act is hereby given the power and the authority to stop and to board any vessel subject to this Act which does not have proper identifying number or is being operated in a reckless manner. Officers so boarding any vessel shall first identify themselves by presenting proper credentials and it shall be unlawful for any person operating a boat on the waters of this State to refuse to obey the directions of such officer when such officer is acting pursuant to the provisions of this Act. Provided, however, that the safety of the vessel shall always be the paramount consideration of any arresting officer.

(c) Any such officer arresting a person for a violation of this Act shall deliver to such alleged violator a written notice to appear (within

thirty (30) days) from and after the date of such alleged violation, before the County Court having jurisdiction of the offense. Such person so arrested shall sign said written notice to appear and thereby promise to make his appearance in accordance with the requirements therein set forth, whereupon he may be released. It shall be unlawful for any person who has made such written promise to appear before the County Court having jurisdiction to fail to appear, and such failure to appear at the time specified shall constitute a misdemeanor and warrant for his arrest may be issued.

(d) Any County Court of any county of this State within which any alleged violation or offense under the terms and provisions of this Act may be committed is hereby vested with jurisdiction under this Act.

**Fines and Penalties**

Sec. 16. It shall be the duty of any justice of the peace, clerk of any court, or any other officer of this State receiving any fine or penalty imposed by any court for violation of this Act within ten (10) days after receipt of such fine or penalty, to remit same to deposit of Special Boat Fund, giving the docket number of the case, name of the person fined, and the Section of Article of the law under which conviction was secured. All costs of the court shall be retained by the court having jurisdiction of the offense, to be deposited as other fees in the proper county fund.

**Fees**

Sec. 17. (a) There is hereby levied a three (3) year fee in Section 4 of this Act as follows:

Class of Motorboats	three (3) year fee
Class A	\$ 1.00
Class -1	5.00
Class -2	10.00
Class -3	12.50

Such fee shall accompany the original and/or renewal application for Certificate of Number as required by this Act.

(b) Partial fees for newly purchased motorboats or other motorboats not previously operated within this State, which according to Section 4, must now be registered, may be paid on a prorated basis reduced each quarter-year.

(c) All fees shall be collected by the department or through its duly authorized agents and deposited in the State Treasury to the credit of the Special Boat Fund.

(d) The Certificate of Number and numbering for purpose of identification, and the fees herein provided for shall be in lieu of all other similar registrations heretofore required by a county, municipality or other political subdivision of this State, and no such registration fees or other like burdens shall be required of any owner of any motorboat by any county, municipality or other subdivision of the State.

**Commercial fishing or shrimping boats**

Sec. 18. None of the fees of this Act shall apply to Commercial Fishing or Shrimping Boats having a boat license issued by the State of Texas to shrimp or fish commercially in the salt waters of this State.

**Use of local funds**

Sec. 19. The State Highway Department is hereby authorized and directed to use any local funds on hand or available to said Department for

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issuing, recording and keeping all such records as are necessary to effectuate the purpose of this Act and all funds available or that accrue from boat registration fees above the administrative costs of said registrations are to be used for the purpose of purchasing access ways to public waters, boat ramps and for the maintenance thereof. Acts 1959, 56th Leg., p. 369, ch. 179.

Effective 90 days after May 12, 1959, date of adjournment.

Section 20 of the Act of 1959 contained a severability clause.

Attempted burglary of vessel, see art. 1404a.

Intoxication, operation of boat, see art. 1333A.

Sinking or destroying vessel, see art. 1332.

Using boat without consent of owner, see art. 1333.

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# THE CODE OF CRIMINAL PROCEDURE

## TITLE 1—INTRODUCTORY

### CHAPTER ONE—GENERAL PROVISIONS

#### Art. 10a. Waiver of trial by jury

The defendant in a criminal prosecution for any offense classified as a felony less than a capital offense, shall have the right, upon entering a plea of guilty or upon entering a plea of nolo contendere, to waive the right of a trial by a jury, conditioned, however, that such waiver must be made in person by the defendant in open court with the consent and approval of the court and the duly elected and acting attorney representing the state. Provided, that said consent and approval by the court and the consent and approval of the attorney representing the state shall be in writing, duly signed by said attorney and filed in the papers of the cause before the defendant enters his plea of guilty or his plea of nolo contendere, as the case may be. Provided further, that before a defendant who has no attorney can agree to waive a jury, the court must appoint an attorney to represent him. As amended Acts 1959, 56th Leg., 3rd C.S., p. 377, ch. 2, § 1.

Effective 90 days after Aug. 6, 1959, date of adjournment.

#### Art. 12. [21] [22] Jury in felony

No person can be convicted of a felony except upon the verdict of a jury duly rendered and recorded, unless in felony cases less than capital, the defendant upon entering a plea of guilty or nolo contendere has in open court in person with the approval and consent of the court and the state's attorney, as provided in Article 10a of the Code of Criminal Procedure of Texas (as amended in Section 1 above), waived his right of trial by jury. Provided, however, that it shall be necessary for the state to introduce evidence into the record showing the guilt of the defendant, and said evidence shall be accepted by the court as the basis for its verdict, and in no event shall a person charged be convicted upon his plea of guilty or plea of nolo contendere, as the case may be, without sufficient evidence to support the same. As amended Acts 1959, 56th Leg., 3rd C.S., p. 377, ch. 2, § 2.

Effective 90 days after Aug. 6, 1959, date of adjournment.

TITLE 2—COURTS AND CRIMINAL JURISDICTION

HARRIS COUNTY—CRIMINAL DISTRICT  
COURTS NOS. 4 AND 5  
52—158b. Criminal District Courts Nos. 4  
and 5 of Harris County [New].

DALLAS COUNTY CRIMINAL DISTRICT COURTS

Art. 52—24. Criminal District Attorney; duties; salary; fees; accounting; assistants; oath; powers; report of expenses; election

*Repeal of salary and compensation laws applicable to criminal district attorney of Dallas county, see note under Vernon's Ann. Civ.St. art. 3883i, § 8.*

HARRIS COUNTY CRIMINAL DISTRICT COURT

Art. 52—25. Galveston and Harris counties criminal judicial district changed to include only Harris county; criminal district court of Harris county created; original jurisdiction

1959 Amendment

*The introductory paragraph of Acts 1959, 56th Leg., p. 903, ch. 414, § 1, amending Art. 52, provided:*

*"Section 1. That article 52 of the Code of Criminal Procedure of the State of Texas, 1925, as amended, as the same relates to and provides for the Criminal District Court of Harris County, the Criminal District Court of Harris County No. 2, the Criminal District Court of Harris County No. 3, the Criminal District Court of Harris County No. 4 and the Criminal District Court of Harris County No. 5, and Article 199 of the Revised Civil Statutes of the State of Texas, 1925, as amended, as the same relates to and provides for the 11th, 55th, 61st, 80th, 113th, 129th, 125th, 127th, 133rd, 151st, 152nd, 157th District Courts of Harris County, Texas, be and said Articles are hereby amended so as to hereafter read as follows: [For text of amendment, see Vernon's Ann.Civ.St. art. 199(11)]."*

Criminal District Courts Nos. 4 and 5  
of Harris County, see art. 52—158b.

DALLAS COUNTY COURT AT LAW

Art. 52—104. Salary of county judge of Dallas County

*Repeal of salary and compensation laws applicable to county judge of Dallas county, see note under Vernon's Ann.Civ.St. art. 3883i, § 8.*

## HARRIS COUNTY CRIMINAL DISTRICT COURT NO. 2

Art. 52—158. Criminal district court No. 2, Harris County created

## 1959 Amendment

*See italicized note preceding Art. 52—25.*

*For text of amendment, see Vernon's Ann.Civ.St. art. 199(11).*

## HARRIS COUNTY—CRIMINAL DISTRICT COURT NO. 3

Art. 52—158a. Criminal District Court No. 3 of Harris County

Title of Acts 1959, 56th Leg., p. 903, ch. 414 provided in part: " \* \* \* nothing in this Act is intended to repeal or amend Article 52—158a, Section 2, first sentence, of the Code of Criminal Procedure of 1925, or any existing law relating to Juveniles, the Juvenile Court of Harris County, or the Judge thereof \* \* \*".

## 1959 Amendment

*See italicized note preceding Art. 52—25.*

*For text of amendment, see Vernon's Ann.Civ.St. art. 199(11).*

## HARRIS COUNTY—CRIMINAL DISTRICT COURTS NOS. 4 AND 5

Art. 52—158b. Criminal District Courts Nos. 4 and 5 of Harris County

Section 1. There is hereby created and established at the City of Houston, two (2) Criminal District Courts to be known as the "Criminal District Court No. 4 of Harris County," and "Criminal District Court No. 5 of Harris County," which Courts shall have and exercise concurrent jurisdiction with the Criminal District Court of Harris County, the Criminal District Court No. 2 of Harris County, and the Criminal District Court No. 3 of Harris County, under the Constitution and laws of the State of Texas.

Sec. 2. From and after the time this law shall take effect, the Criminal District Court of Harris County, the Criminal District Court No. 2 of Harris County, the Criminal District Court No. 3 of Harris County, the Criminal District Court No. 4 of Harris County and the Criminal District Court No. 5 of Harris County, shall have and exercise concurrent jurisdiction with each other in all felony causes, and in all matters and proceedings of which the said Criminal District Court of Harris County, the Criminal District Court No. 2 of Harris County and the Criminal District Court No. 3 of Harris County now have jurisdiction; and the Judge of any one of said Criminal District Courts may in his discretion transfer any cause or causes that may at any time be pending in his Court to one of the other Criminal District Courts by an order or orders entered upon the minutes of his Court; and where such transfer or transfers are made the Clerk of such Criminal District Court shall enter such cause or causes upon the docket to which such transfer or transfers are made, and, when so entered upon the docket, the Judge of that Court shall try and dispose of said causes in the same manner as if such causes were originally instituted in said Court, provided no case shall be transferred without the consent of the Judge of the Court to which transferred. When this Act becomes effective, all felony cases having numbers ending with 4 or 9 pending on the dockets of the Criminal District Court of Harris County and the Criminal District Court No. 2 of Harris County and the Criminal District Court

No. 3 of Harris County shall be at once transferred to and docketed in the Criminal District Court No. 4 of Harris County, and all felony cases having numbers ending with 5 or 0 pending on the dockets of the Criminal District Court of Harris County and the Criminal District Court No. 2 of Harris County and the Criminal District Court No. 3 of Harris County shall be at once transferred to and docketed in the Criminal District Court No. 5 of Harris County, and after the effective date of this Act, the Clerk of the Criminal District Courts shall file and docket felony cases in the Criminal District Court of Harris County, the Criminal District Court No. 2 of Harris County, the Criminal District Court No. 3 of Harris County, the Criminal District Court No. 4 of Harris County, and the Criminal District Court No. 5 of Harris County in rotation in the order filed so that the first case or proceeding filed after the effective date of this Act and every fifth case or proceeding thereafter filed shall be docketed in the Criminal District Court of Harris County, and the second case or proceeding filed and every fifth case or proceeding thereafter filed shall be docketed in the Criminal District Court No. 2 of Harris County, and the third case or proceeding filed and every fifth case or proceeding thereafter filed shall be docketed in the Criminal District Court No. 3 of Harris County, and the fourth case or proceeding filed and every fifth case or proceeding thereafter filed shall be docketed in the Criminal District Court No. 4 of Harris County, Texas, and the fifth case or proceeding filed and every fifth case or proceeding thereafter filed shall be docketed in the Criminal District Court No. 5, of Harris County, Texas, and so on in rotation.

Sec. 3. The Judges of said Criminal District Court No. 4 of Harris County, and the Criminal District Court No. 5, of Harris County, shall be elected by the qualified voters of Harris County for a term of four (4) years, and shall hold his office until his successor shall have been elected and qualified. They shall each possess the same qualifications as are required of the Judge of the District Court, and shall receive the same salary and additional compensation as is now or may hereafter be paid to the District Judges, to be paid in like manner. They shall each have and exercise all the powers and duties now or hereafter to be vested in and exercised by District Judges of the Criminal District Court of Harris County and the Criminal District Court No. 2 of Harris County and the Criminal District Court No. 3 of Harris County. The Judge of each of said Courts may exchange with any District Judge, as provided by law in cases of District Judges, and, in case of disqualification or absence of the Judge, a Special Judge may be selected, elected or appointed as provided by law in cases of District Judges; provided that the Governor, under the authority now provided by law, upon this Act becoming effective, shall appoint a Judge of each of said Courts, who shall hold the office until the next general election, after the passage of this Act, and until his successor shall have been elected and qualified, the Judge of any one of said Criminal District Courts may, in his discretion, in the absence of the Judge of one of the other Criminal District Courts from his courtroom or from the County of Harris, Texas, try and dispose of any cause or causes that may be pending in such Criminal District Courts as fully as could such absent Judge were he personally present and presiding. And any one of said Judges may receive in open Court from the foreman of the Grand Jury any bill or bills of indictment in the Court to which such bill or bills of indictment may be returnable, entering the presentment of such bill or bills of indictment in the minutes of the proceedings of such Court, and may hear and receive from any empaneled petit jury any report, information or verdict, and make and cause to be entered any order or orders in

reference thereto, or with reference to the continuation of the deliberation of such petit jury or their final discharge, as fully and completely as such absent District Judge could do if personally present and presiding over such Court; and may make any other order or orders in such Courts respecting the causes therein pending or the procedure pertaining thereto as the regular Judge of said Criminal Court could make if personally present and presiding.

Sec. 4. Said Court shall each have a seal of like design as the seal now provided by law for District Courts, except that the words "Criminal District Court No. 4 of Harris County" shall be engraved around the margin of one and "Criminal District Court No. 5 of Harris County" of the other thereof, which seals shall be used for all the purposes for which the seals of the District Courts are required to be used; and certified copies of the orders, proceedings, judgments and other official acts of said Court, under the hand of the Clerk and attested by the seal of either said Courts, shall be admissible in evidence in all the Courts of this State in like manner as similar certified copies from Courts of record are now or may hereafter be admissible.

Sec. 5. The Sheriff, District Attorney and the Clerk of the Criminal District Court of Harris County, as heretofore provided for by law, shall be the Sheriff, District Attorney and Clerk, respectively, of said Criminal District Court No. 4 of Harris County and Criminal District Court No. 5 of Harris County under the same rules and regulations as are now or may hereafter be prescribed by law for the government of Sheriffs, District Attorneys and Clerks of the District Courts of the State; and said Sheriff, District Attorney and Clerk shall respectively receive such fees as are now or may hereafter be prescribed by law for such officers in the District Courts of the State, to be paid in the same manner. The County Commissioners Court shall have authority to pay out of the Officers' Salary Fund or other general funds of the county for the services of such special deputy district Clerks as in their judgment shall be required, such special deputy or deputies to be appointed by the Clerk of the Criminal District Court, and to be removable at the will of the Clerk, and to be paid a salary not to exceed the compensation allowed by law to other deputy district Clerks, said salary shall be payable monthly. The District Attorney may appoint an assistant District Attorney in addition to those now provided by law to attend said Court. Said assistant shall have the authority and shall qualify as provided by law for assistant District Attorneys, and shall be removable at the will of the District Attorney, and shall receive a salary not to exceed the maximum salary allowed assistant District Attorneys; said salary to be payable monthly by said County by warrant drawn from the Officers' Salary Fund or other general funds thereof. The Judges of the Criminal District Court No. 4 of Harris County, and the Criminal District Court No. 5 of Harris County shall appoint an official court reporter for said Court as provided by law.

Sec. 6. Said Courts shall hold four (4) terms each year for the trial of causes and the disposition of business coming before it, one term beginning the first Monday in May, one term beginning on the first Monday of August, one term beginning on the first Monday in November, and one term beginning on the first Monday of February of each year. Each term shall continue until the business is disposed of. The trials and proceedings in said Court shall be conducted according to the law governing the pleadings, practice and proceedings in criminal cases in District Courts. The District Judges of the Criminal District Courts of Harris County shall successively appoint Grand Jury commissioners and empanel Grand Juries; and they shall meet together and determine approximately the num-

ber of petit jurors that are reasonably necessary for jury service in the criminal District Courts of the County for each week during the said time said Courts may hold court during the year, and shall thereupon order the drawing of such number of jurors from the jury wheel of the County for each of said weeks, said jury to be known as the panel of jurors for service in the Criminal District Courts for the respective weeks for which they are designated to serve. The Judges of the said Criminal District Courts shall agree upon which one shall be authorized to act in carrying out the provisions of this Act as relating to the calling and qualifying of the jury panel; they may increase or diminish the number of jurors to be selected for any week, and shall order said jurors drawn for as many weeks in advance of service as they deem proper. From time to time they shall designate the Criminal District Judge to whom the panel of jurors shall report for duty, and said Judge, for such time as he is chosen to so act, shall organize said juries and have immediate supervision and control of them. The said jurors, after being regularly drawn from the wheel, shall be served by the Sheriff to appear and report for jury service before said Judge so designated, who shall hear excuses of said jurors and swear them in for service for the week that they are to serve to try all cases that may be submitted to them in any of said Criminal District Courts, and they may be used interchangeably in the Criminal District Courts. In the event of a deficiency of said jurors the Judge having control of said panel of jurors shall order such additional jurors to be drawn from the wheel as may be sufficient to meet such emergency, but such jurors shall act only as special jurors and shall be discharged as soon as their services are no further needed. The provisions of the Statutes commonly known as the "jury wheel law" shall remain in full force and effect, except as modified by this Act. Acts 1959, 56th Leg., p. 555, ch. 249.

**Amendment by Acts 1959, 56th Leg., p. 903, ch. 414, § 1**

*See italicized note preceding Art. 52—25.*

*For text of amendment, see Vernon's Ann.Civ.St. art. 199(11).*

Effective 90 days after May 12, 1959, date of adjournment.

Section 7 of the Act of 1959 contained a severability clause and section 8 repealed all conflicting laws and parts of laws.

Harris County Criminal District Court, see art. 52—25 et seq.

**DALLAS COUNTY CRIMINAL COURT**

**Art. 52—159. County Criminal Court of Dallas County, creation, jurisdiction, etc.**

*Repeal of salary and compensation laws applicable to judge of county criminal court of Dallas county, see note under Vernon's Ann.Civ.St. art. 3883i, § 8.*

**Art. 52—159a. County Criminal Court No. 2 of Dallas County**

*Repeal of salary and compensation laws applicable to judge of the county criminal court, No. 2, of Dallas county, see note under Vernon's Ann.Civ.St. art. 3883i, § 8.*

**Art. 52—159b. County Criminal Court No. 3 of Dallas County**

**Sec. 13-A.** The Judge of County Criminal Court of Dallas County, Texas, and the Judge of County Criminal Court No. 2 of Dallas County,

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

Texas, and the Judge of County Criminal Court No. 3 of Dallas County, Texas, may, in their discretion, exchange benches and sit and hear cases in the court in which the case or proceeding is then pending, and try or otherwise dispose of same. Added Acts 1959, 56th Leg., 2nd C.S., p. 84, ch. 2, § 1.

Emergency. Effective July 13, 1959.

*Repeal of salary and compensation laws applicable to judge of county criminal court, No. 3, of Dallas county, see note under Vernon's Ann.Civ.St. art. 3883i, § 8.*

## TITLE 4—LIMITATION AND VENUE

### CHAPTER ONE—LIMITATION

Art. 177. [225] [215] Treason; theft or conversion by executor, administrator, guardian or trustee; forgery

An indictment for treason may be presented within twenty (20) years, or for theft or conversion of any estate, real, personal, or mixed by an executor, administrator, guardian or trustee with intent to defraud any creditor, heir, legatee, ward, distributee, beneficiary or settlor of a trust interested in such estate, may be presented within ten (10) years, and for forgery or the uttering, using or passing of forged instruments, within ten (10) years from the time of the commission of the offense, and not afterward. As amended Acts 1959, 56th Leg., p. 931, ch. 428, § 1.

Emergency. Effective May 30, 1959.



TITLE 7—AFTER COMMITMENT OR BAIL AND BEFORE THE TRIAL

CHAPTER ONE—ORGANIZATION OF THE GRAND JURY

Art.

367k. Grand jury riding bailiffs in counties below 250,000 population; compensation [New].

Art. 367k. Grand jury riding bailiffs in counties below 250,000 population; compensation

Grand jury riding bailiffs in counties having a population below two hundred and fifty thousand (250,000) according to the last preceding Federal Census shall receive compensation of not to exceed Seven Dollars and Fifty Cents (\$7.50) per day, and in addition thereto Seven Cents (7¢) per mile for the expenses of their automobile when used pursuant to official duties. Such compensation may be paid out of the General Fund or the Jury Fund of such counties, as the Commissioners Court of such counties may determine. Such compensation and expenses may be paid monthly. Acts 1959, 56th Leg., p. 859, ch. 385, § 1.

Effective 90 days after May 12, 1959, date of adjournment.

Section 2 of the Act of 1959 repealed all conflicting laws and parts of laws.

Title of Act:

An Act relating to the compensation of grand jury riding bailiffs in counties be-

low two hundred and fifty thousand (250,000) population; repealing all laws in conflict; and declaring an emergency. Acts 1959, 56th Leg., p. 859, ch. 385.

CHAPTER THREE—INDICTMENT AND INFORMATION

Art.

408a. Allegation of acts of negligence [New].

Art. 408a. Allegation of acts of negligence

Whenever negligence enters into or is a part or element of any offense, or it is charged that the accused acted negligently or with negligence in the committing of an offense, the complaint, information, or indictment in order to be sufficient in any such case must allege, with reasonable certainty, the act or acts relied upon to constitute negligence, and in no event shall it be a sufficient compliance with this Act to allege merely that the accused, in committing the offense, acted negligently or with negligence.

Provided, further, that in charging any such offense or any other offense of the grade of a misdemeanor not more than one offense may be charged or alleged in the same complaint, information, or indictment. Acts 1959, 56th Leg., p. 864, ch. 390, § 1.

Effective 90 days after May 12, 1959, date of adjournment.

## CHAPTER FOUR—PROCEEDINGS PRELIMINARY TO TRIAL

## Art. 494. 558, 547 Court shall appoint counsel

Whenever it is made known to the court at an arraignment or any other time that an accused charged with a felony is too poor to employ a counsel, the court shall appoint one (1) or more practicing attorneys to defend him.

The counsel so appointed shall have ten (10) days to prepare for trial, unless such time be waived in writing by said attorneys and the accused. As amended Acts 1957, 55th Leg., p. 392, ch. 193, § 1; Acts 1959, 56th Leg., p. 1061, ch. 484, § 1.

Emergency. Effective June 1, 1959.

## Art. 494a. Compensation of counsel appointed to defend

Section 1. Whenever the court shall appoint one or more counsel(s) to defend any person or persons pursuant to law in any felony case in this State, each counsel may, at the discretion of the trial judge, be paid a fee in the sum of Twenty-five Dollars (\$25) per day for each day such appointed attorney is actually in trial court representing the person he has been appointed to represent. Provided, further, that in all cases wherein a bona fide appeal is actually prosecuted to a final conclusion, each appointed counsel may be paid One Hundred Dollars (\$100) for said appeal. Provided, however, on pleas of guilty before the court, said appointed counsel may be paid Ten Dollars (\$10) per case. The fee allowed counsel shall be paid by the county wherein such trial is held and such sum to be paid from county funds, where such funds are available.

Sec. 1A. Repealed. Acts 1959, 56th Leg., 2nd C.S., p. 147, ch. 31, § 2.

Sec. 2. No such allowance shall be made unless an affidavit is filed with the clerk of the court by the defendant showing that he is wholly destitute of means to provide counsel, and that he has not been released on bail bond. As amended Acts 1959, 56th Leg., 2nd C.S., p. 147, ch. 31, § 1.

Effective 90 days after July 16, 1959,  
date of adjournment.

## Art. 501. [555] [554] Plea of guilty

If the defendant pleads guilty, or enters a plea of nolo contendere, he shall be admonished by the court of the consequences; and neither of such pleas shall be received unless it plainly appears that he is sane, and is uninfluenced by any consideration of fear, or by any persuasion, or delusive hope of pardon, prompting him to confess his guilt. As amended Acts 1959, 56th Leg., p. 257, ch. 149, § 1.

Emergency. Effective May 8, 1959.

## Art. 502. [566] [555] Jury on plea of guilty

Where a defendant in a case of felony persists in pleading guilty or in entering a plea of nolo contendere, if the punishment is not absolutely fixed by law, a jury shall be impaneled to assess the punishment and evidence submitted to enable them to decide thereupon. As amended Acts 1959, 56th Leg., p. 257, ch. 149, § 2.

Emergency. Effective May 8, 1959.

## Art. 505. 569, 558 Defendant's pleading

On the part of the defendant, the following are the only pleadings:

1. The motion to set aside the indictment or information.

2. A special plea setting forth one or more facts as cause why the defendant ought not to be tried upon the accusation presented against him.

3. An exception to the indictment or information for some matter of form or substance.

4. A plea of guilty.

5. A plea of not guilty.

6. A plea of nolo contendere. A plea of nolo contendere must be made in open court by the defendant in person. The legal effect of such plea shall be the same as that of a plea of guilty, but the plea may not be used against the defendant as an admission in any civil suit based upon or growing out of the act upon which the criminal prosecution is based. As amended Acts 1959, 56th Leg., p. 257, ch. 149, § 3.

Emergency. Effective May 8, 1950.

#### **Art. 517. [581] [570] Plea of guilty in felony**

A plea of guilty or a plea of nolo contendere in a felony case must be made in open court by the defendant in person; and the proceedings shall be as provided in Articles 501, 502 and 505 as herein amended. If the plea is before the judge alone, same may be made in the same manner as is provided for by Articles 10a and 12 of Vernon's Code of Criminal Procedure; being an Act in 1931 of the 42nd Legislature, page 65, Chapter 43. As amended Acts 1959, 56th Leg., p. 257, ch. 149, § 4.

Emergency. Effective May 8, 1959.

#### **Art. 518. [582] [571] Plea of guilty in misdemeanor**

A plea of guilty or a plea of nolo contendere in a misdemeanor case may be made either by the defendant or his counsel in open court; in such case, the defendant or his counsel may waive a jury, and the punishment may be assessed by the court either upon or without evidence, at the discretion of the court. As amended Acts 1959, 56th Leg., p. 257, ch. 149, § 5.

Emergency. Effective May 8, 1959.

#### **Art. 519. Change of venue to plead guilty**

When in any county which is located in a judicial district composed of more than one county, a party is charged with a felony and the maximum punishment therefor shall not exceed fifteen years, and the district court of said county is not in session, such party may, if he desires to plead guilty, or enter a plea of nolo contendere, make application to the district judge of such district for a change of venue to the county in which said court is in session, and said district judge may enter an order changing the venue of said cause to the county in which the court is then in session, and the defendant may plead guilty or enter a plea of nolo contendere to said charge in said court to which the venue has been changed. As amended Acts 1959, 56th Leg., p. 257, ch. 149, § 6.

Emergency. Effective May 8, 1959.

## TITLE 8—TRIAL AND ITS INCIDENTS

## CHAPTER ONE—THE MODE OF TRIAL

**Art. 582. 648-900 On bail during trial**

Where the accused is on bail when the trial commences, such bail shall not be considered as discharged until the jury shall return into court a verdict of guilty or not guilty. He shall have the same right to have and remain on bail during the trial of his case and up to the return into court of such verdict as under the law he has before the trial commences; but immediately upon the return into court of a verdict of guilty, he shall be placed in the custody of the sheriff, and his bail considered discharged. Where the accused is convicted in a misdemeanor case and is on bail when the trial commences, such bail shall not thereby be considered discharged until the defendant's motion for a new trial has been overruled by the court; provided, also, that where the accused is convicted in a felony case and the punishment assessed against him does not exceed confinement in the penitentiary for a term of fifteen (15) years and he is on bail when the trial commences, the trial court shall have the discretion to permit him to remain at large pending the court's action on his motion for a new trial, in which event such bail shall not be considered discharged until the defendant's motion for a new trial has been overruled by the court. As amended Acts 1959, 56th Leg., p. 256, ch. 148, § 1.

Emergency. Effective May 8, 1959.

## TITLE 9—PROCEEDINGS AFTER VERDICT

## CHAPTER ONE—NEW TRIALS

## Art. 759a. Statement of facts and bills of exception

## Time for filing statement; extension

Sec. 4. The defendant shall file said statement of facts in duplicate, with the clerk of the trial court within ninety (90) days after the date of giving notice of appeal; and for good cause shown, the judge trying the cause may further extend the time in which to file the statement of facts, and shall have the power, in term time or vacation, upon application for good cause to extend for as many times as deemed necessary the time for preparation and filing of statement of facts, and the approval of the statement of facts after the expiration of the ninety (90) day period shall be sufficient proof that the time for filing was properly extended. As amended Acts 1959, 56th Leg., 1st C.S., p. 20, ch. 7, § 1.

Emergency. Effective June 27, 1959.

## Defendant unable to pay

Sec. 5. When a defendant in a felony case appeals and is not able to pay for a transcript of the evidence, he shall make an affidavit of such fact and upon the making of such affidavit the court shall order the official court reporter to make a Statement of Facts in narrative or question and answer form, as the defendant in said affidavit shall request. For each said service the court reporter may be paid by the county in which the crime was alleged to have been committed, upon certificate of the trial judge, one half ( $\frac{1}{2}$ ) of the rate provided for by law in civil cases. In the event the court reporter is not paid by said county for said service he shall be paid by the State of Texas, upon certificate of the trial judge, one half ( $\frac{1}{2}$ ) of the rate provided by law in civil cases. As amended Acts 1959, 56th Leg., p. 860, ch. 386, § 1.

Effective 90 days after May 12, 1959,  
date of adjournment.

## Art. 760d. Time for filing bills of exception

A defendant in a criminal prosecution shall have ninety (90) days after the giving of notice of appeal within which to prepare and file his bills of exception with the trial judge; and thereafter the trial judge may have until one hundred (100) days have elapsed after notice of appeal was given within which to consider and act on the same.

A filing by the defendant of his bills of exception with the clerk of the court shall constitute a filing of the bills with the trial court, within the meaning of that term as here used. The clerk of the court will immediately call the trial judge's attention to the filing of the bills of exception.

Unless the trial court refuses to approve the bills of exception within the time above specified, the bills of exception shall be considered as approved by the trial court and no other approval thereof is necessary.

If the trial judge refuses to approve the bills of exception, he shall so note, and state thereon his reason or reasons for refusal, and return the bills to the clerk of the court, who shall note on the bills of exception the date and time the bills were returned to him by the trial judge.

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

The clerk of the court shall immediately notify the defendant or his counsel that the trial judge has refused the bills of exception.

If the defendant agrees to the reasons assigned by the trial judge for refusing to approve the bills of exception, he may note such fact on the bills of exception, in which event the bills of exception will stand approved with the reasons of the trial judge as a part of and qualification to the bills of exception.

In the event the defendant does not accept the trial court's reasons for refusing to approve the bills of exception, then the defendant or the trial judge shall have fifteen days time from and after the date the trial court returned the refused bills of exception to the clerk of the court within which to prepare and file bystanders bills of exception.

Nothing in this Act shall prevent the defendant and the trial judge from agreeing upon or to the correctness of the bill of exception and the filing thereof in the trial court within ninety days from the date notice of appeal was given. Such a bill of exception shall be considered as approved by the trial judge. Acts 1951, 52nd Leg., p. 817, ch. 462, § 1, as amended Acts 1959, 56th Leg., p. 794, ch. 362, § 1.

Effective 90 days after May 12, 1959,  
date of adjournment.

### CHAPTER THREE—JUDGMENT AND SENTENCE

#### Art. 781d. Adult Probation and Parole Law of 1957

##### Article II. Probations

Sec. 6. The court having jurisdiction of the case shall determine the terms and conditions of probation and may at any time during the period of probation alter or modify the conditions; provided, however, that the Clerk of the Court shall furnish a copy of such terms and conditions to the probationer, and shall note the date of delivery of such copy on the docket. Terms and conditions of probation may include, but shall not be limited to, the conditions that the probationer shall:

- a. Commit no offense against the laws of this or any other state or the United States;
- b. Avoid injurious or vicious habits;
- c. Avoid persons or places of disreputable or harmful character;
- d. Report to the probation officer as directed;
- e. Permit the probation officer to visit him at his home or elsewhere;
- f. Work faithfully at suitable employment as far as possible;
- g. Remain within a specified place;
- h. Pay his fine, if one be assessed, in one or several sums, and make restitution or reparation in any sum that the court shall determine; and
- i. Support his dependents. As amended Acts 1959, 56th Leg., p. 1081, ch. 492, § 1.

Emergency. Effective June 1, 1959.

## TITLE 10—APPEAL AND WRIT OF ERROR

Art. 856. 949, 915 Hearing in appellate court

RULES OF THE COURT OF CRIMINAL APPEALS<sup>1</sup>

Adopted and Re-adopted March 20, 1958

I. Wednesday of each week, as heretofore, is set apart for the submission of cases and the delivery of opinions.

II. The Court will, in its discretion, from time to time set all cases for submission in the order of their filing so nearly as practicable, and the Clerk will be directed to use all reasonable diligence to notify counsel of record of such setting, though failure to receive notice will not necessarily prevent, or defeat the submission of the case on the day which it is set.

III. When set for submission, cases will not be postponed by agreement of counsel or for other reasons, except upon request for good cause shown.

IV. Habeas corpus cases will have precedence and be assigned as set by the Court for such times and dates as may be convenient.

V. Cases of general interest, where the public good demands, may be advanced on written motion under the direction of the Court.

VI. Any party desiring a rehearing of any matter determined by the Court of Criminal Appeals may, within fifteen days after the opinion is handed down, file with the Clerk of said Court his motion in writing for a rehearing thereof, distinctly specifying the grounds relied upon for the rehearing.

If the Court hands down an opinion in connection with the overruling of a motion for rehearing, a further motion for rehearing may be filed by the losing party within fifteen days after such opinion is handed down; but a further motion for rehearing shall not be made as a matter of right in any other case.

Any motion for rehearing may be amended any time before the expiration of the fifteen-day period allowed for filing it, and with leave of the Court any time before its final disposition.

All motions and other matters filed in the Court of Criminal Appeals and not disposed of at the end of the term shall be automatically continued to the next succeeding term of said Court.

VII. It is ordered by the Court that the time of oral arguments (unless extended in special matters) shall be as follows:

Felony cases with penalty fixed by the jury at three (3) years or more, forty (40) minutes opening; fifteen minutes (15) rejoinder.

Felony cases with penalty fixed by jury at less than three (3) years, thirty (30) minutes opening; ten (10) minutes rejoinder.

Misdemeanor and habeas corpus cases, thirty (30) minutes opening; five (5) minutes rejoinder.

On motion for rehearing, the unsuccessful party may consume one-half of that allowed on original hearing, and the prevailing party shall not be permitted to orally reply.

VIII. Cases filed without bills of exception or statement of facts are submitted as soon as possible after being filed. Where the proceedings are found regular and no question of law is

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

raised in such cases, they will be disposed of by per curiam opinion not citing authorities. Such per curiam opinions shall not be published, and the Clerk of the Court shall not certify any such opinions for publication.

Should such an opinion be cited in any future case before the Court, it shall not be deemed an authority.

IX. The Commission of Appeals in aid of the Court of Criminal Appeals sits with the Court, and holds no separate sessions.

X. The Court of Criminal Appeals meets at 9:30 A. M. each Wednesday during the term.

1. Rules I, II, IV and V remain as adopted October 4, 1909.

Rule III adopted in 1909 has been changed by omission of the provision that the request for postponement be in writing and that an order of the Court be required to postpone submission.

Rule VI is a new rule adopting the present procedure. It is occasioned by the repeal of the rule adopted by the Supreme Court to the effect that the Clerk of the Court of Criminal

Appeals shall be governed by the rules applicable to clerks of the Courts of Civil Appeals, except where a different rule may be prescribed by statute. (Rule 1 for the Court of Criminal Appeals, 67 S.W. xiv, repealed by Texas Rules of Civil Procedure, Rule 821).

Rules VII, IX and X are the Former Rules VIII, XI and XII and remain as adopted October 21, 1925.

Rule VIII was former Rule IX and remains as amended May 8, 1957.





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References are to Civil Statutes unless otherwise indicated.

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**C.C.P.** ..... Indicates Code of Criminal Procedure.  
**Elec.Code** ..... Indicates Election Code.  
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475	1027	15	4494q—2 note
475	1027	16	Emergency
476	1032	—	7880—1 note
477	1034	—	7880—1 note
478	1036	1	6079e
478	1036	2, 3	6079e note
478	1036	4	Emergency
479	1047	—	7880—1
480	1049	1	Elec.Code 5.14
480	1049	2	Elec.Code 13.01a
480	1049	3	Elec.Code 13.01a note
480	1049	4, 5	Elec. Code 5.14 note
480	1049	6	Emergency
481	1052	1-4	2654—1b
481	1052	5	2654—1b note
481	1052	6	Emergency
482	1054	1, 2	2775a—2
482	1054	3	Emergency
483	1055	1	Elec.Code 5.05, subds. 1-8
483	1055	2	Elec.Code 5.05, subds. 15-17
483	1055	3	Elec.Code 5.06
483	1055	4	Elec.Code 5.05 note, 5.06 note
483	1055	5	Elec.Code 5.05 note
483	1055	6	Emergency
484	1061	1	C.C.P. 494
484	1061	2	Emergency
485	1062	1, 2	3179a
485	1062	3	3179a note
485	1062	4	Emergency
487	1066	1	P.C. 1137n
487	1066	2	P.C. 1137n Repealed
487	1066	3	Emergency
488	1067	1	2919e—2, § 18
488	1067	2	Emergency
489	1068	1	4542a, § 3

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Ch.	P.	Sec.	Art.
489	1068	2	4542a, § 8
489	1068	3	4542a, § 9
489	1068	4	4542a, § 11
489	1068	5	4542a, § 12
489	1068	6	4542a, § 14
489	1068	7	4542a, § 16
489	1068	8	4542a, § 17
489	1068	9	4542a note
489	1068	10	Emergency
490	1075	1-6	199(146)
490	1075	7, 8	199(146) note
490	1075	9	Emergency
491	1077	1	2919d, § 2
491	1077	2	2919d note
491	1077	3	Emergency
492	1081	1	C.C.P. 781d, § 6
492	1081	2	Emergency
493	1082	1	41a, § 4
493	1082	2	Emergency
494	1083	1-3	5441b
494	1083	4	Emergency
496	1085	1	Ins.Code 14.17
496	1085	2	Emergency
497	1086	1-11	8280—239
497	1086	12	Emergency
498	1096	—	P.C. 978j note
499	1097	—	P.C. 978j note
500	1098	1	7150, § 21
500	1098	2	Emergency
501	1099	1(A)	6243g, § 4(f)
501	1099	1(B)	6243g, § 5(b)
501	1099	1(C)	6243g, § 10
501	1099	1(D)	6243g, § 12
501	1099	1(E)	6243g, § 13
501	1099	1(F)	6243g, § 16
501	1099	2	6243g, § 3(c) Repealed
501	1099	2a	6243g note
501	1099	3	Emergency
502	1103	1	2039a, § 1
502	1103	2	Emergency
503	1105	1-8	8280—240
503	1105	9	Emergency
504	1109	1	P.C. 827a, § 5½
504	1109	2	P.C. 834 Repealed
504	1109	3	P.C. 827a note
504	1109	4	Emergency

1959 (56th Leg.) First Called  
Session

Convened May 18, 1959

Adjourned June 16, 1959

Ch.	P.	Sec.	Art.
1	9	1	4348a
1	9	2	7083a (1-4, 4b, 4c, 6)
1	9	3	7065b—25
1	9	4, 5	4348a note
1	9	6	Emergency
4	17	1	3883i, § 5
4	17	2	Emergency

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Ch.	P.	Sec.	Art.
5	18	1	835n
5	18	2	Emergency
7	20	1	C.C.P. 759a, § 4
7	20	2	Emergency
8	21	1	7094
8	21	2	Emergency
9	22	1-17	4494q-3
9	22	18	4494q-3 note
9	22	19	Emergency
10	30	—	7880-1 note
11	33	—	7880-1 note
12	35	1	2338-11, § 16-A
12	35	2	Emergency
13	36	—	7880-1 note
14	37	—	P.C. 978j note
15	38	1	3886h
15	38	2	3886h note
15	38	3	Emergency
16	39	—	7880-1 note
17	41	1-19	8280-241
17	41	20	8280-241 note
17	41	21	Emergency
19	48	—	P.C. 978j note
20	49	—	P.C. 978j note
21	49	1-7	2777d-1
21	49	8	Emergency

1959 (56th Leg.) Second Called  
Session

Convened June 17, 1959  
Adjourned July 16, 1959

Ch.	P.	Sec.	Art.
1	83	1	7047c-1, § 2(e)
1	83	2	7047c-1, § 2 note
1	83	3	Emergency
2	84	1	C.C.P. 52-159b, § 13-A
2	84	2	Emergency
3	85	1	P.C. 941-2, § 1
3	85	2	Emergency
4	86	1	2338-2, § 1
4	86	2	Emergency
6	89	1-5	973b
6	89	6	Emergency
7	90	—	1970-310 note
8	92	1	1268a
8	92	2	Emergency
9	93	1	8280-157, § 2
9	93	2	8280-157, § 3
9	93	3	8280-157, § 15(a)
9	93	4	8280-157, § 24-A
9	93	5, 6	8280-157 note
9	93	7	Emergency
11	98	1, 2	2784e-4
11	98	3	Emergency
12	99	1	2654a
12	99	2	2654b-1, § 1
12	99	3, 4	2654a note
12	99	5	Emergency
13	102	1, 2	1269h-2

1959 56th Leg.) Second Called  
Session—Cont'd

Ch.	P.	Sec.	Art.
13	102	3	Emergency
14	103	1	Ins.Code 1.04 note
14	103	2	Emergency
15	104	1	7656a
15	104	2	Emergency
17	106	1-8	P.C. 978f-6
17	106	9	P.C. 978f-6 note
17	106	10	Emergency
18	108	—	P.C. 978j note
19	108	1-8	5415d
19	108	9	5415d note
19	108	10	Emergency
20	113	1	4605
20	113	2	Emergency
21	114	1	2745b
21	114	2	2745b note
21	114	3	Emergency
22	115	—	7880-1 note
23	119	1-21	8280-242
23	119	22	8280-242 note
23	119	23	Emergency
24	124	1	P.C. 908(c)
24	124	2	P.C. 908(d)
24	124	3	P.C. 908(e)
24	124	4	P.C. 908(h)
24	124	5	P.C. 908(i)
24	124	6	Emergency
25	126	1-24	2372o
25	126	25	Emergency
26	132	1-31	8280-243
26	132	32	Emergency
27	143	—	P.C. 978j note
28	144	1	8280-147, §§ 7-a, 7-b
28	144	2	Emergency
29	145	1	8280-188, § 8(d)
29	145	2	8280-188, § 5(f)
29	145	3	Emergency
30	146	1	P.C. 879h-1 note
30	146	2	Emergency
31	147	1	C.C.P. 494a
31	147	2	C.C.P. 494a note
31	147	3	Emergency
32	148	—	P.C. 978j note
33	148	1	6819a-24
33	148	2	6819a-24 note
33	148	3	Emergency
34	149	1	6819a-25
34	149	2	6819a-25 note
34	149	3	Emergency
35	150	—	7880-1 note
36	156	1-3	P.C. 782b
36	156	4, 5	P.C. 782b note
36	156	6	Emergency
37	157	1-3	5139FF
37	157	4, 5	5139FF note
37	157	6	Emergency
38	158	—	P.C. 978j note
39	159	1	Ins.Code 7.01
39	159	2	Emergency

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1959 (56th Leg.) Second Called  
Session—Cont'd

Ch.	P.	Sec.	Art.
40	160	1	P.C. 1722a, § 4(f)
40	160	2	Emergency
41	161	1	6687b, art. IV, § 22
41	161	2	6687b note
41	161	3	Emergency
42	164	1-5	P.C. 1377b
42	164	6	P.C. 1377 Repealed
42	164	7	P.C. 1377b
42	164	8	P.C. 1377b note
42	164	9	Emergency
43	167	1	3883i, § 8
43	167	2	3883i note
43	167	3	Emergency

1959 (56th Leg.) Third Called  
SessionConvened July 17, 1959  
Adjourned Aug. 6, 1959

Ch.	P.	Sec.	Art.
1	187	1	Taxation-General
1	187	2	P.C. 666—21
1	187	3-6	Taxation-General note
1	187	7	Repealer
1	187	8	Taxation-General note
1	187	9	Emergency
2	377	1	C.C.P. 10a
2	377	2	C.C.P. 12
2	377	3	Emergency
3	378	1	8280—157, § 24-A
3	378	2	Emergency
4	379	1	6819a—12a
4	379	2, 3	6819a—12a note

1959 (56th Leg.) Third Called  
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Ch.	P.	Sec.	Art.
4	379	4	Emergency
5	380	1	2372d—2, § 1
5	380	2	Emergency
6	381	1	4417a
6	381	2	Emergency
7	382	1	6243h, § II(16)
7	382	2	Emergency
8	388	1	2614
8	383	2	Emergency
9	384	—	P.C. 978j note
10	385	1	2367a, § 2
10	385	2	Emergency
11	386	1	7880—1 note
12	388	1	8280—227, § 6-A
12	388	2, 3	8280—227 note
12	388	4	Emergency
13	389	1-17	2338—9a
13	389	18	Emergency
15	394	—	P.C. 978j note
16	395	1	7047c—1, § 2(e)
16	395	2-4	6687b note
16	395	5	Emergency
19	430	1-5	966g
19	430	6	Emergency
20	431	—	P.C. 978j note
21	432	1	Elec.Code 7.14, § 16a
21	432	2	Elec.Code 7.14 note
21	432	3	Emergency
22	434	1	8280—131
22	434	2-4	8280—131 note
22	434	5	Emergency
24	736	1-6	8280—244
24	736	7	8280—244 note
24	736	8	Emergency



# TITLE 122A—TAXATION—GENERAL

## DISPOSITION TABLE

Showing where former Articles of Vernon's Annotated Texas Statutes relating to Taxation will be found in New Title 122A, Taxation-General.

V.A.T.S. Former Articles	Taxation General Articles	V.A.T.S. Former Articles	Taxation General Articles
7046	2.01	7047b § 1(4)	3.03
7047	19.01	7047b § 2	3.04
7047 subd. 6	19.01(1)	7047b § 2a	3.05
7047 subd. 7	19.01(2)	7047b § 3	3.06
7047 subd. 9	19.01(9)	7047b § 4	3.07
7047 subd. 10	19.01(3)	7047b § 5	3.08
7047 subd. 13	19.01(4)	7047b § 6	3.09
7047 subd. 14	19.01(5)	7047b § 6	3.10
7047 subd. 15	19.01(6)	7047c—1 § 1	7.01
7047 subd. 36	19.01(8)	7047c—1 § 2	7.02
7047 subd. 40b	5.01	7047c—1 § 2	7.03
7047 subd. 40b § 1 par. 2	5.02	7047c—1 § 2 par. c	7.04
7047 subd. 41a(a)	18.01	7047c—1 § 2 par. d	7.05
7047 subd. 41a(b) (c) (d)	18.02	7047c—1 § 2½	7.06
7047 subd. 41a(e)	18.03	7047c—1 § 2a	7.07
7047 subd. 41a(f)	18.04	7047c—1 § 3	7.08
7047 subd. 43	19.03	7047c—1 § 4	7.09
7047a—2	13.01	7047c—1 § 5	7.10
7047a—3	13.02	7047c—1 § 6	7.11
7047a—4	13.03	7047c—1 § 6	7.12
7047a—5	13.04	7047c—1 § 7	7.13
7047a—6	13.05	7047c—1 § 7	7.14
7047a—7	13.06	7047c—1 § 8	7.15
7047a—8	13.07	7047c—1 § 8a	7.16
7047a—9	13.08	7047c—1 § 9	7.17
7047a—10	13.09	7047c—1 § 10	7.19
7047a—11	13.10	7047c—1 § 11	7.20
7047a—12	13.11	7047c—1 § 13	7.21
7047a—13	13.12	7047c—1 § 14	7.22
7047a—14	13.13	7047c—1 § 15	7.23
7047a—15	13.14	7047c—1 § 16	7.24
7047a—15a	13.15	7047c—1 § 16 par. (a)	7.25
7047a—16	13.16	7047c—1 § 16 par. (a)	7.26
7047a—19	21.01	7047c—1 § 17	7.27
7047a—19 subsecs. 3-7	21.02	7047c—1 § 18	7.28
7047a—19 subsec. 9	21.03	7047c—1 § 19	7.29
7047a—19 subsec. 10	21.04	7047c—1 § 20	7.30
7047a—20 § 4	1.08	7047c—1 § 20	7.31
7047b	3.01	7047c—1 § 21	7.32
7047b § 1(2)	3.02	7047c—1 § 22	7.33

## DISPOSITION TABLE

V.A.T.S. Former Articles	Taxation General Articles	V.A.T.S. Former Articles	Taxation General Articles
7047c-1 § 23	7.34	7057a § 2	4.02
7047c-1 § 24	7.35		4.03
7047c-1 § 26	7.36	7057a § 3	4.04
7047c-1 § 26	7.37	7057a § 4	4.05
7047c-1 § 28	7.38	7057a § 5	4.06
7047c-1 § 30	7.40	7057a § 6	4.07
7047c-1 § 30a	7.39	7057a § 7	4.08
7047c-1 note	7.41	7057a § 8a	4.09
7047c-2 § 9	7.18	7057a § 8b	4.10
7047d	19.01(7)	7057a § 9	4.11
7047j	1.06	7057e	1.07, 1.10
7047k § 1	6.01	7058	11.01
7047k § 2(a)	6.03	7059	11.02
7047k § 2(b)	6.04	7060	11.03
7047k § 3	6.05	7060a § 1	19.02
7047k § 4	6.06	7062	11.04
7047k § 5	6.07	7063	11.05
7047k § 5(a)	6.08	7065b-1	9.01
7047k § 5a(b)	6.09	7065b-1	10.02
7047k § 6	6.10	7065b-2	9.02
7047k § 7	6.11	7065b-3	9.03
7047l	20.01	7065b-4	9.04
7047l	20.02	7065b-4	10.23
7047l	20.05	7065b-5	9.05
7047l	20.06	7065b-6	9.06
7047l-1 § 1	20.01	7065b-7	9.07
7047l-1 § 2	20.02	7065b-8	9.08
7047l-1 § 3	20.09	7065b-9	9.09
7047l-1 § 4	20.10	7065b-10	9.10
7047l-1 § 5	20.11	7065b-11	9.11
7047l-1 § 6	20.12	7065b-12	9.12
7047l-1 § 7	20.13	7065b-13	9.13
7047l-1 § 8	20.14	7065b-13	10.14
7047l-1 § 9	20.15	7065b-13	10.15
7047l-1 § 10	20.16	7065b-14	10.03
7047l-1 § 11	20.17	7065b-14	10.08
7047l-1 § 12	20.18	7065b-14	10.09
7047l-1 § 13	20.19	7065b-14(a)	9.14
7047l-1 § 14	20.20	7065b-14(c)	10.10
7047l-1 § 15	20.20	7065b-14(d)	10.11
7047m § 1	16.01	7065b-14(e)	10.12
7047m § 2	16.02	7065b-14(e)	10.16
7047m § 3	16.03	7065b-14(f)	10.13
7047m § 4	16.04	7065b-14(f)	10.16
7047m § 6	16.05	7065b-14(g)	10.17
7047m § 7	16.06	7065b-15	9.15
7047m § 8	16.07	7065b-16	9.16
7047m § 9	16.08	7065b-17	9.17
7047m § 10	16.09	7065b-18	9.18
7057	1.03	7065b-18	10.18
7057a § 1	4.01	7065b-19	9.19
	4.03	7065b-20	9.20
		7065b-20	10.19

V.A.T.S. Former Articles	Taxation General Articles	V.A.T.S. Former Articles	Taxation General Articles
7065b—21	9.21	7129	14.14
7065b—22	9.22	7130	14.15
7065b—23	9.23	7131 par. (a)	14.16
7065b—24	9.24	7131 par. 'b	14.17
7065b—24	10.20	7132	14.18
7065b—25	9.25	7133	14.19
7065b—25	10.22	7134	14.20
7065b—26	9.26	7135	14.21
7065b—26	10.25	7136	14.22
7065b—27	9.27	7137	14.23
7065b—27	10.24	7138	14.24
7070	11.06	7139	14.25
7076	1.04	7141	14.26
7078	1.09	7144	14.27
7084	12.01	7144a § 1	15.01
7084	12.02	7144a § 2	15.02
7085	12.05	7144a § 3	15.03
7086	12.06	7144a § 4	15.04
7086	12.09	7144a § 5	15.05
7087	12.07	7144a § 6	15.06
7089	12.08	7144a § 7	15.07
7089	12.10	7144a § 8	15.08
7089	12.11	7144a § 10	15.10
7089	12.12	7144a § 11	15.11
7090	12.13	7144a § 12	15.12
7091	12.14	7144a § 14	15.14
7092	12.15	7144a § 15	15.15
7093	12.04	7144a § 16	15.16
7094	12.03		
7095	12.16	<b>Vernon's</b>	<b>Taxation</b>
7096	12.17	<b>Pen. Code</b>	<b>General</b>
7097	12.18	<b>Articles</b>	<b>Articles</b>
7117	14.01	1111a § 8	4.12
7118	14.02	1111a § 9a	4.13
7119	14.03	1111a, § 9b	4.14
7120	14.04	1111d § 1	17.01
7121	14.05	1111d § 2	17.02
7122	14.06	1111d § 3	17.03
7122a	14.07	1111d § 3	17.04
7123	14.08	1111d § 5	17.05
7124	14.09	1111d § 6	17.06
7125	14.10	1111d § 7	17.07
7126	14.11	1111d § 7a	17.08
7127	14.12	1111d § 8	17.09
7128	14.13	1111d § 9	17.10

# TITLE 122A—TAXATION—GENERAL

## DERIVATION TABLE

Showing Articles of the new Title 122A, Taxation-General and the former Articles of Vernon's Annotated Texas Statutes.

Taxation General Articles	V.A.T.S. Former Articles *	Taxation General Articles	V.A.T.S. Former Articles *
1.01 -----	No counterpart	4.01 -----	7057a § 1
A provision inserted in many		4.02 -----	7057a § 2
lengthy statutes to clarify con-		4.03 -----	7057a §§ 1, 2
struction of the law.		4.04 -----	7057a § 3
1.02 -----	No counterpart	4.05 -----	7057a § 4
To prevent a misleading or in-		4.06 -----	7057a § 5
complete heading from being		4.07 -----	7057a § 6
construed with the body of an		4.08 -----	7057a § 7
article and giving an oppor-		4.09 -----	7057a § 8a
tunity for a construing court		4.10 -----	7057a § 8b
to hold the article ambiguous.		4.11 -----	7057a § 9
1.03 -----	7057	4.12 -----	Penal Code, art. 1111a § 8
1.04 -----	7076	4.13 -----	Penal Code, art. 1111a § 9a
1.06 -----	7047j	4.14 -----	Penal Code, art. 1111a § 9b
1.08 -----	7047a—20 § 4	5.01 -----	7047 par. 40b
1.09 -----	7078	5.02 -----	7047 par. 40b § 1 par. 2
Because some taxes may be		5.03 -----	7047 par. 40b § 1 par. 2
levied by cities or counties and		6.01 -----	7047k § 1
some may not, this clears up		Tax raised from 1.1% to	
any ambiguity about those		1.5%.	
where the law is silent.		6.02 -----	New
1.11 -----	New	Determination of actual value	
Has only one purpose, to per-		has been a problem in adminis-	
mit credits of overpayments		tration of this tax. This is a	
against future liabilities. No		provision for improving ad-	
interest allowed, credits run for		ministration.	
five years.		6.03 -----	7047k § 2(a)
2.01 -----	7046	Rate raised from 1.1% to	
3.01 -----	7047b	1.5%.	
References to prior rates		6.04 -----	7047k § 2(b)
omitted.		6.05 -----	7047k § 3
3.02 -----	7047b § 1(2)	6.06 -----	7047k § 4
3.03 -----	7047b § 1(4)	6.07 -----	7047k § 5
3.04 -----	7047b § 2	6.08 -----	7047k § 5(a)
3.05 -----	7047b § 2a	Subsection 2 requires all sell-	
3.06 -----	7047b § 3	ers to retain a true copy of the	
3.07 -----	7047b § 4	invoice on each sale and records	
3.08 -----	7047b § 5	are to be retained 2 years, in-	
3.09 -----	7047b § 6	stead of 4 years.	
3.10 -----	7047b § 6	6.09 -----	7047k § 5a subsec. (b)

\* References are to the Civil Statutes unless indicated otherwise.

Taxation General Articles	V.A.T.S. Former Articles *	Taxation General Articles	V.A.T.S. Former Articles *
6.10	7047k § 6	7.30	7047c—1 § 20
Counties get 3½% instead of 5%.		7.31	7047c—1 § 20
6.11	7047k § 7	7.32	7047c—1 § 21
6.12	New	7.33	7047c—1 § 22
Misdemeanor if records pro- vided in 6.08 are not kept.		7.34	7047c—1 § 23
7.01	7047c—1 § 1	7.35	7047c—1 § 24
Slight textual changes—ciga- rettes definition clarified.		7.36	7047c—1 § 26
7.02	7047c—1 § 2	7.37	7047c—1 § 26
7.03	7047c—1 § 2	7.38	7047c—1 § 28
7.04	7047c—1 § 2 par. c	7.39	7047c—1 § 30a
7.05	7047c—1 § 2 par. (d)	7.40	7047c—1 § 30
7.06	7047c—1 § 2½	7.41	7047c—1 note
Changed credit of August re- ceipts to August 31st each year. Exemptions from Clearance Fund priorities specifically con- tinued.		8.01	New
7.07	7047c—1 § 2a	This chapter enacts a new tax. The tax is generally pat- terned after the cigarette tax but evidently contemplates a reporting system of collection rather than a stamp collection system.	
7.08	7047c—1 § 3	8.02	New
The Cigarette Tax Stamp Board is replaced by authority of the Comptroller to procure stamps.		8.03	New
Discount to distributors changed from 4% of ¾ to 2¼% of face value.		8.04	New
7.09	7047c—1 § 4	8.05	New
Last day of February.		8.06	New
7.10	7047c—1 § 5	8.07	New
7.11	7047c—1 § 6	8.08	New
7.12	7047c—1 § 6	8.09	New
7.13	7047c—1 § 7	8.10	New
7.14	7047c—1 § 7	8.11	New
7.15	7047c—1 § 8	8.12	New
7.16	7047c—1 § 8a	8.13	New
7.17	7047c—1 § 9	8.14	New
7.18	7047c—1 § 9	8.15	New
7.19	7047c—1 § 10	8.16	New
7.20	7047c—1 § 11	8.17	New
7.21	7047c—1 § 13	8.18	New
7.22	7047c—1 § 14	8.19	New
7.23	7047c—1 § 15	8.20	New
Late application 1.00 Field collection 5.00		8.21	New
7.24	7047c—1 § 16	8.22	New
7.25	7047c—1 § 16 par. (a)	8.23	New
7.26	7047c—1 § 16 par. (a)	8.24	New
7.27	7047c—1 § 17	8.25	New
7.28	7047c—1 § 18	8.26	New
7.29	7047c—1 § 19	8.27	New
		8.28	New
		8.29	New
		8.30	New
		8.31	New
		9.01	7065b—1
		Minor textual change	

\* References are to the Civil Statutes unless indicated otherwise.

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9.02	7065b-2	10.25	7065b-26
9.03	7065b-3	11.01	7058
9.04	7065b-4		Obsolete provisions regarding
9.05	7065b-5		1931 taxes deleted.
9.06	7065b-6	11.02	7059
9.07	7065b-7	11.03	7060
9.08	7065b-8		Rates increased 20%.
9.09	7065b-9	11.04	7062
9.10	7065b-10	11.05	7063
9.11	7065b-11	11.06	7070
9.12	7065b-12	12.01	7084
9.13	7065b-13	12.02	7084
9.14	7065b-14(a)	12.03	7094
9.15	7065b-15	12.04	7093
9.16	7065b-16	12.05	7085
9.17	7065b-17	12.06	7086
9.18	7065b-18	12.07	7087
9.19	7065b-19	12.08	7089
9.20	7065b-20	12.09	7086
9.21	7065b-21	12.10	7089
9.22	7065b-22	12.11	7089
9.23	7065b-23	12.12	7089
9.24	7065b-24	12.13	7090
9.25	7065b-25	12.14	7091
9.26	7065b-26	12.15	7092
9.27	7065b-27	12.16	7095
10.01	New	12.17	7096
10.02	7065b-1	12.18	7097
10.03	7065b-14	12.19	New
10.04	New		For smaller taxpayers.
	Derived from art. 919.	12.20	New
10.05	New	12.21	New
	Derived from art. 919.	12.22	New
10.06	New	13.01	7047a-2
10.07	New		Merchandise or music coin
10.08	7065b-14		operated machines, now omitted
10.09	7065b-14		as a separate category.
10.10	7065b-14(c)	13.02	7047a-3
10.11	7065b-14(d)	13.03	7047a-4
10.12	7065b-14(e)	13.04	7047a-5
10.13	7065b-14(f)	13.05	7047a-6
10.14	7065b-13	13.06	7047a-7
10.15	7065b-13	13.07	7047a-8
10.16	7065b-14(e) (f)	13.08	7047a-9
10.17	7065b-14(g)		Slight textual change to de-
10.18	7065b-18		lete obsolete provisions.
10.19	7065b-20	13.09	7047a-10
10.20	7065b-24	13.10	7047a-11
10.21	General Administrative Provisions	13.11	7047a-12
10.22	7065b-25	13.12	7047a-13
10.23	7065b-4	13.13	7047a-14
10.24	7065b-27	13.14	7047a-15
		13.15	7047a-15a

\* References are to the Civil Statutes unless indicated otherwise.

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14.02	7118	17.03	Penal Code art. 1111d § 3
14.03	7119	17.04	Penal Code art. 1111d § 3
14.04	7120	17.05	Penal Code art. 1111d § 5
14.05	7121	17.06	Penal Code art. 1111d § 6
14.06	7122	17.07	Penal Code art. 1111d § 7
As amended 1959.		17.08	Penal Code art. 1111d § 7a
14.07	7122a	17.09	Penal Code art. 1111d § 8
14.08	7123	17.10	Penal Code art. 1111d § 9
14.09	7124	18.01	7047 par. 41a(a)
14.10	7125	18.02	7047 par. 41a(b) (c) (d)
14.11	7126	18.03	7047 par. 41a(e)
14.12	7127	18.04	7047 par. 41a(f)
14.13	7128	19.01	7047
14.14	7129	19.01	New Old
14.15	7130	(1) Auctioneers	7047 § 6
14.16	7131 par. a	(2) Brokers & factors	7
14.17	7131 par. b	(3) Insurance adjusters	10
14.18	7132	(4) Pawn brokers	13
14.19	7133	(5) Loan brokers	14
14.20	7134	(6) Money lenders	15
14.21	7135	(8) 9 & 10 pin alleys 7047 § 36	
14.22	7136	(9) Ship brokers	§ 9
14.23	7137	19.02	7060a § 1
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14.25	7139	20.01	7047l
14.26	7141		Now includes phonographs
14.27	7144		and component parts, air con-
15.01	7144a § 1		ditioners, boats and boat mo-
15.02	7144a § 2		tors newly taxed.
15.03	7144a § 3	20.02	7047l
15.04	7144a § 4		Application broadened. Rate
15.05	7144a § 5		raised from 2.2% to 3.0%.
Computation of tax-report		20.03	New
15.06	7144a § 6		Boat & boat motor tax 1.5%,
15.07	7144a § 7		new.
15.08	7144a § 8	20.04	New
15.10	7144a § 10		3% tax levied on air condi-
15.11	7144a § 11		tioners.
15.12	7144a § 12	20.05	7047l
15.14	7144a § 14		Cosmetics definition expand-
15.15	7144a § 15		ed.
15.16	7144a § 16	20.06	7047l
16.01	7047m § 1		Definition changed.
16.02	7047m § 2	20.06½	New
16.03	7047m § 3	20.07	New
16.04	7047m § 4	20.08	New
16.05	7047m § 6	20.09	New
16.06	7047m § 7	20.10	New
16.07	7047m § 8	20.11	New
16.08	7047m § 9	20.12	New
16.09	7047m § 10	20.13	New

\* References are to the Civil Statutes unless indicated otherwise.

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20.18	-----New	23.05	-----New
20.19	-----New	23.06	-----New
20.20	-----New	24.01	-----New
21.01	-----7047a—19	This chapter forms a ready reference for discovering the allocation of revenues.	
21.02	-----7047a—19 subsecs. 3-7		
21.03	-----7047a—19 subsec. 9		
21.04	-----7047a—19 subsec. 10		

\* References are to the Civil Statutes unless indicated otherwise.





# GENERAL INDEX

References are to articles of Civil Statutes, unless otherwise indicated.

## ABBREVIATIONS

Bus Corp	Business Corporation Act.
CCP	Code of Criminal Procedure.
Const	Constitution.
Elec Code	Election Code.
Ins Code	Insurance Code.
Non-Profit Corp	Non-Profit Corporation Act.
PC	Penal Code.
Prob Code	Probate Code.
Tax-Gen	Taxation-General.

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